TEXAS REGISTER

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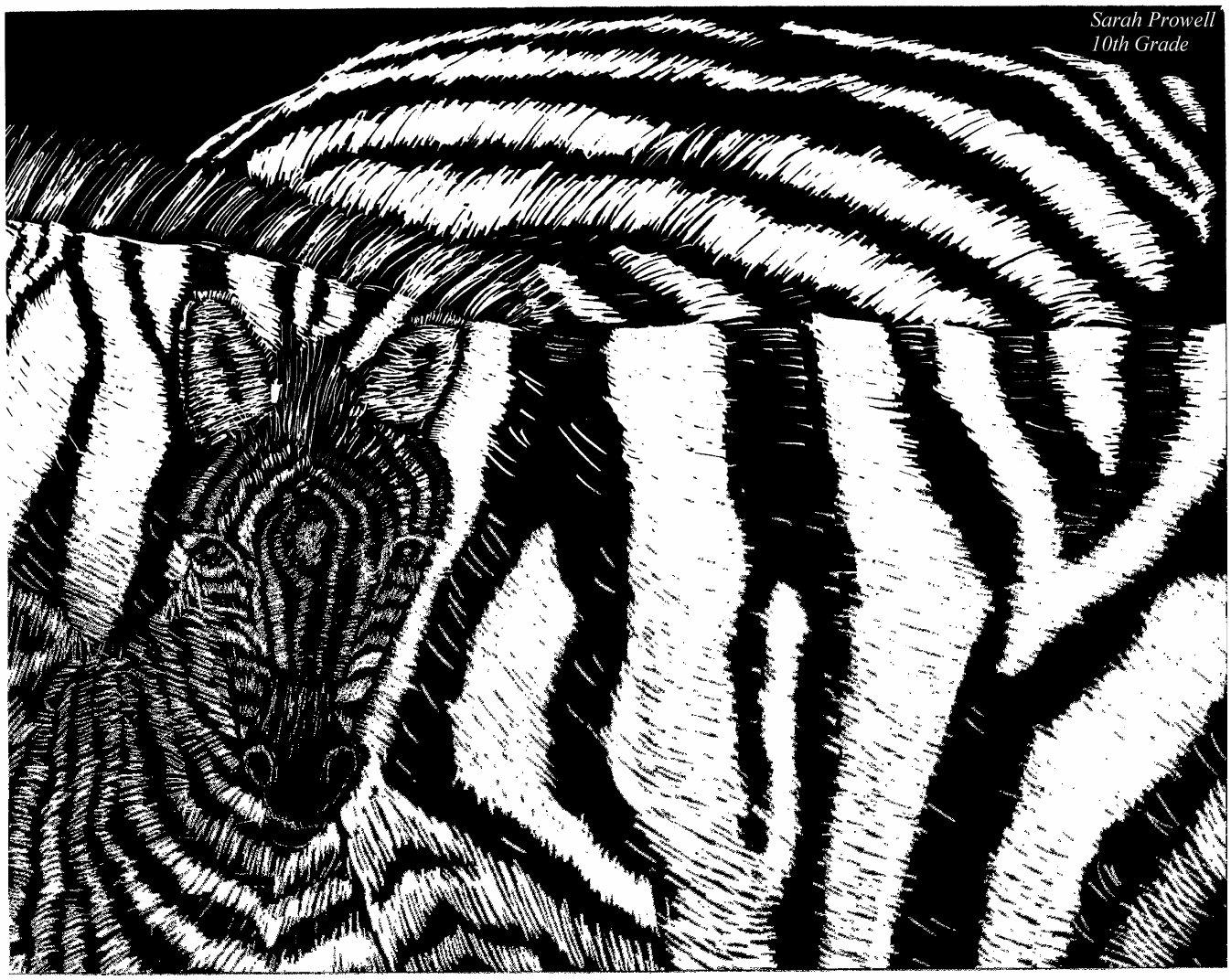

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointment for January 16, 2007

Appointed to be a member of the State Commission on Judicial Conduct, pursuant to HJR 87, 79th Legislature, for a term to expire November 19, 2011, Cynthia Tauss Delgado of El Paso.

Appointments for January 25, 2007

Appointed to be a Commissioner for the Texas Commission on Environmental Quality for a term to expire August 31, 2011, Hector Steven "Buddy" Garcia of Austin (Replacing Martin Hubert of Austin who resigned).

Appointed to be a member of the State Securities Board for a term to expire January 20, 2011, Edward Escudero of El Paso. Mr. Escudero will replace Kenneth W. Anderson, Jr. of Dallas whose term expired.

Rick Perry, Governor

TRD-200700222

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Executive Order

RP 63

Relating to the creation of the Texas Southern University Advisory Committee

WHEREAS, Texas Southern University provides educational opportunities for Texas residents and individuals from around the nation and the world; and

WHEREAS, Texas Southern University's excellence in higher education is essential to promoting long-term economic growth and ensuring a stable, long-term source of educated Texans; and

WHEREAS, Texas Southern University is one of two comprehensive Historically Black Colleges and Universities in Texas and one of the four-year colleges in Texas with an open enrollment policy, accepting all eligible students with a high school diploma or GED equivalent; and

WHEREAS, it is in the state's and students' best interests to improve excellence of academic programs and graduation rates at Texas Southern University; and

WHEREAS, the faculty and administrative staff at Texas Southern University have adopted a "Five Point Vision" that includes fiscal responsibility, service and accountability in administration, hospitable learning and living environment, commitment to community outreach and academic and faculty excellence; and

WHEREAS, with the rapidly rising costs of a higher education all across Texas, colleges and universities must implement fiscal and administrative practices to aid retention and graduation rates of students seeking a higher education;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas as the Chief Executive Officer, do hereby order the following:

Creation. The Texas Southern University Advisory Committee ("Committee") is hereby created. The Committee shall examine, evaluate, and make recommendations on relevant issues to the Board of Regents on the future fiscal needs of Texas Southern University.

The Committee should seek, consider, and evaluate reports on the overall administration and budget as it relates to ensuring a quality educational experience for Texas Southern University students, to include administrative governance, financial aid, technology in instruction, strategic planning, and exemplifying a culture of academic and professional excellence both internally and externally.

Composition and Organization. The Committee shall consist of members appointed by the governor. All appointees serve at the pleasure of the governor. The governor may designate a member of the Committee to serve as chair of the Committee. The Chair may appoint sub-committees to fulfill the purposes of the Committee. The Chair shall determine the meeting times and places for the Committee.

Administrative Support. The Office of the Governor, Texas Southern University, the Higher Education Coordinating Board, and other state agencies may provide staff and funding to assist the Committee as necessary. Institutions of higher education throughout the state are strongly encouraged to assist the Committee in their study and research.

Recommendations and Report. The Committee shall develop a set of recommendations to improve the fiscal management of Texas Southern University so that taxpayers are provided a transparent review of their tax dollars and so that students and their parents can be confident in the value of the cost of educational programming as the university continues to focus on increasing graduation and retention rates. The Committee shall submit a full report, including findings and legislative recommendations, to the board of regents, with copies provided to the governor, lieutenant governor, and speaker of the house of representatives prior to March 15, 2007. Any subsequent work of the Committee may be addressed in supplementary reports as appropriate.

This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms and this order shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding governor.

Given under my hand this the 26th day of January, 2007.

Rick Perry, Governor

TRD-200700262

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Executive Order

RP 64

Relating to the creation, composition, and operation of the Texas Criminal Justice Statistical Analysis Center to provide objective analysis and assessment of State criminal justice programs and initiatives.

WHEREAS, establishing a statistical analysis center will result in more cost-effective criminal justice programs and initiatives; and

WHEREAS, establishing a statistical analysis center will increase the public safety of all Texans; and

WHEREAS, the State's involvement in criminal justice policy is critical for all levels of government to develop appropriate programs and policies related to crime, illegal drugs, services to victims, and the administration of justice; and

WHEREAS, there is a need for a statistical analysis center to maximize the resources available and continue to reduce crime in Texas; and

WHEREAS, the mission of the Texas Statistical Analysis Center shall be to collect, analyze and report statewide criminal justice statistics; evaluate the effectiveness of state-funded initiatives; and disseminate analysis results to practitioners, policy-makers, researchers, and the public in order to enhance the quality of criminal justice and crime prevention at all levels of government.

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas as the Chief Executive Officer, do hereby order the following:

Creation. The Texas Criminal Justice Statistical Analysis Center, is hereby created and shall carry out the mission stated herein.

Designation. The Texas Criminal Justice Statistical Analysis Center is designated as the criminal justice statistical analysis center for the State of Texas and as the liaison for the state to the United States Department of Justice on criminal justice issues of interest to the state and federal government related to criminal justice data collection, analysis, information systems, reporting, and research.

Authorization to Contract. The Texas Criminal Justice Statistical Analysis Center is authorized to contract with qualified public or private entities for designated program evaluations, assessments, research projects, population forecasting, and general assistance. Contracts shall be monitored by the Texas Statistical Analysis Center for compliance, audited for accuracy, and evaluated for effectiveness.

Personnel. Staff may be employed as necessary to accomplish the mission stated in this executive order.

Funding. The Texas Criminal Justice Statistical Analysis Center is hereby authorized to seek available State and Federal funding to accomplish the mission set forth in this executive order.

Assets. The Texas Criminal Justice Statistical Analysis Center shall use the assets of the Office of the Governor to accomplish the mission and purposes set forth in this executive order.

Access to Data. The Criminal Justice Statistical Analysis Center is hereby authorized access to the data bases of the Department of Public Safety, the Texas Department of Criminal Justice, the Texas Juvenile Probation Commission, the Texas Youth Commission, the Texas Department of State Health Services, and any other relevant agencies as needed to accomplish the duties as set forth in this executive order and in accordance with applicable state and federal laws or regulations. The access authorized by this executive order does not grant the Center the right to add, delete, or alter data maintained by another agency.

This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms and this order shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding governor.

Given under my hand this the 29th day of January, 2007.

Rick Perry, Governor

TRD-200700263

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Opinions

Opinion No. GA-0501

The Honorable David Swinford

Chair, Committee on State Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Criminal provisions applicable when a physician fails to comply with section 164.052(a)(18) of the Occupations Code, which restricts third-trimester abortions, or section 164.052(a)(19) thereof, which requires parental consent for abortions performed on unemancipated minors (RQ-0501-GA)

S U M M A R Y

A physician who violates section 164.052(a)(18) or 164.052(a)(19) of the Texas Occupations Code is subject to the criminal penalties of the Occupations Code.

Opinion No. GA-0502

The Honorable John W. Segrest

McLennan County Criminal District Attorney

219 North 6th Street, Suite 200

Waco, Texas 76701

Re: Whether section 1704.304(c) of the Occupations Code, which prohibits solicitation of bail bond customers in a jail, extends to advertising or licensee information displayed on a licensee's vehicle when the vehicle is located in a county jail parking lot (RQ-0507-GA)

S U M M A R Y

Section 1704.304(c) of the Occupations Code does not prohibit a bail bond licensee's display of advertising or licensee information on a vehicle in the parking lot of a county jail. The constitutionality of section 1704.109, which permits a bail bond board to regulate the solicitation and advertisement of bail bonds, is the subject of current litigation.

Opinion No. GA-0503

The Honorable Rex Emerson

Kerr County Attorney

County Courthouse, Suite BA-103

700 Main Street

Kerrville, Texas 78028

Re: Whether a county commissioners court may delegate nonstatutorily assigned duties to other elected county officials (RQ-0504-GA)

S U M M A R Y

A commissioners court may delegate duties that are not assigned by the constitution or statutes to an elected county official whom the commissioners court determines is appropriate. But the commissioners court's authority to require the officer to perform the delegated duties is limited to its authority over county budgeting. And the county commissioners court cannot, in delegating noncore duties to an official, impair the official's ability to perform the office's core duties.

Opinion No. GA-0504

The Honorable Carlos Valdez

105th Judicial District District Attorney

Nueces County Courthouse

901 Leopard, Room 206

Corpus Christi, Texas 78401-3681

Re: Whether a group of local officials called the Jail Population Control Committee is subject to the Open Meetings Act, Government Code chapter 551 (RQ-0505-GA)

S U M M A R Y

A group of elected and appointed officials and public employees in Nueces County who call themselves the Jail Population Control Committee and meet to share information about jail conditions does not supervise or control public business or public policy and is accordingly not subject to the Open Meetings Act.

Opinion No. GA-0505

Mr. C. Tom Clowe, Jr.

Chair, Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

Re: Whether section 2001.160 of the Occupations Code allows the holder of a commercial bingo lessor license to transfer the license to a person other than a corporation formed or owned by the license holder (RQ-0506-GA)

S U M M A R Y

Section 2001.160 of the Occupations Code does not authorize the holder of a commercial bingo lessor license to transfer the license to a person other than a corporation formed or owned by the license holder. An order of the Texas Lottery Commission transferring a commercial lessor license or granting a subsequent license, an amended license, or a renewal that does not show a lack of Commission authority on its face and that was not procured by extrinsic fraud is not void. The Commission does not have general authority to reopen an order granting a license transfer that has become administratively final.

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200700265
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 30, 2007

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

DIVISION 1. RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

16 TAC §25.173

The Public Utility Commission of Texas (commission) proposes an amendment to §25.173, relating to the Goal for Renewable Energy. The proposed amendment will increase the state's renewable portfolio standard (RPS) and will establish a target of having at least 500 megawatts (MW) of capacity from a renewable energy technology other than a source using wind energy. Both changes are required by Senate Bill 20, 79th Legislature, 1st Called Session (2005), which amended Public Utility Regulatory Act (PURA) §39.904, relating to the Goal for Renewable Energy. This amendment is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 33492 is assigned to this proceeding.

In addition to the aforementioned changes required by SB 20, the amendment includes a number of other modifications of, and clarifications to the existing rule. The threshold for "small generators" would increase from 2 MW to 10 MW; small fossil-fueled generators in existence before 1999 could earn renewable energy credits (RECs) if repowered to use renewable fuel; and a REC offset would cease to be effective if the power purchase agreement on which it was based is no longer in effect.

Ms. Lauren Damen, Senior Retail Market Analyst, Electric Industry Oversight, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Ms. Damen has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to increase the amount of electricity delivered to customers using renewable generation resources in Texas, consistent with the goals established in state law. The expected benefits also include increasing the state's use of renewable-energy sources, reducing the use of generation technologies that result in air emissions, and diversifying the state's electric generating resource portfolio. For the longer term, the amendment is expected to foster further reductions in the cost of renewable energy technologies.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment. There may be economic costs to retail electric providers and other persons who are required to comply with the amendment, specifically with regard to the extended RPS. However, these costs are necessary to implement PURA §39.904 as amended by SB 20. Ms. Damen has also determined that for each year of the first five years the amendment is in effect, local economies where renewable resources are developed may experience employment growth.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, March 27, 2007, at 9:00 a.m. in the Commissioner's Hearing Room. The request for a public hearing must be received by Monday, March 12, 2007.

Comments on the amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, March 12, 2007. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by Monday, March 26, 2007. Comments should be organized in a manner consistent with the organization of the rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 33492. In addition to the proposed language, the commission requests that parties submit comments on the following questions:

1) *Subsection (e)(2) provides that in order for a facility that requires fossil fuel to be eligible to produce RECs, the facility's use of fossil fuel must not exceed 2.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis. Would it be appropriate to raise the percentage as high as 25%? What technologies should be able to take advantage of such an increased allowance in the use of fossil fuel? Are there negative consequences that would result from such an increase?*

2) *This proposal contemplates that RECs and compliance premiums will have the same life span of three years. Would the value of the compliance premiums be increased or decreased if the rule established a longer life-span for compliance premi-*

ums? Would a different life-span for compliance premiums be appropriate?

3) *Proposed subsection (l)(1) provides that eligible non-wind renewable technologies that have no air emissions will be awarded two compliance premiums rather than the one compliance premium awarded to other technologies. Is it appropriate for this rule to make this distinction among renewable technologies?*

When commenting on specific subsections of the proposed amendment, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already implementing renewable energy programs, if the parties believe that Texas would benefit from application of the same policies. The commission is interested in receiving only "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state efforts.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, 15.023, 39.101(b)(3) and 39.904 (Vernon 1998 & Supplement 2006). Section 14.001 provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; Section 15.023 provides the commission the power to impose administrative penalties against a person regulated under PURA who violates PURA or an order adopted under PURA; Section 39.101(b)(3) provides that a customer is entitled to have access to providers of energy generated by renewable energy resources; and Section 39.904, provides the commission the power to adopt rules necessary to administer and enforce the programs to promote the development of renewable energy technologies.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 15.023, 36.204, 39.101, and 39.904.

§25.173. Goal for Renewable Energy.

(a) Purpose. The purposes [~~purpose~~] of this section are: [~~is~~]

(1) to ensure that the cumulative installed generating capacity from renewable energy technologies in this state totals 2,280 megawatts (MW) by January 1, 2007, 3,272 MW by January 1, 2009, 4,264 MW by January 1, 2011, 5,256 MW by January 1, 2013, and 5,880 MW by January 1, 2015, with at least 500 MW of the total installed renewable capacity after September 1, 2005, coming from a renewable energy technology other than a source using wind energy, and that the means exist for the state to achieve a target of 10,000 MW of installed renewable capacity by January 1, 2025; [~~an additional 2,000 megawatts (MW) of generating capacity from renewable energy technologies is installed in Texas by 2009 pursuant to the Public Utility Regulatory Act (PURA) §39.904,~~]

(2) to provide for [~~establish~~] a renewable energy credits trading program by which the renewable energy requirements established by the Public Utility Regulatory Act (PURA) §39.904(a) may be achieved [~~that would ensure that the new renewable energy capacity is built~~] in the most efficient and economical manner;[~~,~~]

(3) to encourage the development, construction, and operation of new renewable energy resources at those sites in this state that have the greatest economic potential for capture and development of this state's environmentally beneficial resources;[~~,~~]

(4) to protect and enhance the quality of the environment in Texas through increased use of renewable resources; and[~~,~~]

(5) to ensure [~~respond to customers' expressed preferences for renewable resources by ensuring~~] that all customers have access to providers of energy generated by renewable energy resources pursuant to PURA §39.101(b)(3)[~~, and to ensure that the cumulative installed renewable capacity in Texas will be at least 2,880 MW by January 1, 2009~~].

(b) Application. This section applies to power generation companies as defined in §25.5 of this title (relating to definitions), and retail entities [~~competitive retailers~~] as defined in subsection (c) of this section. [~~This section shall not apply to an electric utility subject to PURA §39.102(c) until the expiration of the utility's rate freeze period.~~]

(c) Definitions.

[~~(1) Competitive retailer--A municipally-owned utility, generation and transmission cooperative (G&T), or distribution cooperative that offers customer choice in the restructured competitive electric power market in Texas or a retail electric provider (REP) as defined in §25.5 of this title.~~]

(1) [~~(2)~~] Compliance period--A calendar year beginning January 1 and ending December 31 of each year in which renewable energy credits are required of a retail entity [~~competitive retailer~~].

(2) Compliance premium--A premium awarded by the program administrator in conjunction with a renewable energy credit that is generated by a renewable energy source that is not powered by wind and meets the criteria of subsection (l) of this section. For the purpose of the renewable energy portfolio standard requirements, one compliance premium is equal to one renewable energy credit.

(3) Designated representative--A responsible natural person authorized by the owners or operators of a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of the renewable resource in all matters pertaining to the renewable energy credits trading program.

[~~(4) Early banking--Awarding renewable energy credits (RECs) to generators for sale in the trading program prior to the program's first compliance period.~~]

(4) [~~(5)~~] Existing facilities--Renewable energy generators placed in service before September 1, 1999.

(5) [~~(6)~~] Generation offset technology--Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.

(6) Microgenerator--A customer who owns one or more eligible renewable energy generating units with a rated capacity of 10 kW or less operating on the customer's side of the utility meter.

(7) New facilities--Renewable energy generators placed in service on or after September 1, 1999. A new facility includes the incremental capacity and associated energy from an existing renewable facility achieved through repowering activities undertaken on or after September 1, 1999.

(8) Off-grid generation--The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(9) Program administrator--The entity approved by the commission that is responsible for carrying out the administrative responsibilities related to the renewable energy credits trading program as set forth in subsection (g) of this section.

(10) REC aggregator--An entity managing the participation of two or more microgenerators in the REC trading program.

(11) [~~(10)~~] REC offset (offset)--An REC offset represents one megawatt-hour (MWh) [~~MWh~~] of renewable energy from an existing facility that is not eligible to earn renewable energy credits or compliance premiums [~~may be used in place of an REC to meet a renewable energy requirement imposed under this section. REC offsets may not be traded, shall be calculated as set forth in subsection (i) of this section, and shall be applied as set forth in subsection (h) of this section~~].

(12) [~~(11)~~] Renewable energy credit (REC or credit)--A [~~An~~] REC represents one MWh [~~megawatt hour (MWh)~~] of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (e) of this section.

(13) [~~(12)~~] Renewable energy credit account (REC account)--An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs or compliance premiums by a program participant.

(14) [~~(13)~~] Renewable energy credits trading program (trading program)--The process of awarding, trading, tracking, and submitting RECs or compliance premiums as a means of meeting the renewable energy requirements set out in subsection (d) of this section.

(15) [~~(14)~~] Renewable energy resource (renewable resource)--A resource that produces energy derived from renewable energy technologies.

(16) [~~(15)~~] Renewable energy technology--Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(17) Renewable Portfolio Standard (RPS)--The amount of capacity required to meet the requirements of PURA §39.904 pursuant to subsection (h) of this section.

(18) [~~(16)~~] Repowering--Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.

(19) Retail entity--Municipally-owned utilities, generation and transmission cooperatives or distribution cooperatives that offer customer choice, retail electric providers (REPs), and investor-owned utilities that have not unbundled pursuant to PURA Chapter 39.

(20) [~~(17)~~] Settlement period--The first calendar quarter following a compliance period in which the settlement process for that compliance year takes place.

(21) [~~(18)~~] Small producer--A renewable resource that is less than ten [~~two~~] megawatts (MW) in size.

(d) Renewable energy credits trading program (trading program). Renewable energy credits may be generated, transferred, and retired by renewable energy power generators certified pursuant to subsection (n) of this section, retail entities, [~~competitive retailers,~~] and other market participants as set forth in this section.

(1) The program administrator shall apportion an RPS [~~a renewable resource~~] requirement among all retail entities [~~competitive retailers~~] as a percentage of the retail sales of each retail entity [~~competitive retailer~~] as set forth in subsection (h) of this section. Each retail entity [~~competitive retailer~~] shall be responsible for retiring sufficient RECs as set forth in subsections (h) and (k) of this section to comply with this section. The requirement to retire RECs to comply with [~~purchase RECS pursuant to~~] this section becomes effective on the date a retail entity [~~each competitive retailer~~] begins serving retail electric customers in Texas or, for an electric utility, as specified by law.

(2) A power generating company may participate in the program and may generate RECs and buy or sell RECs as set forth in subsection (j) of this section.

(3) RECs shall be credited on an energy basis as set forth in subsection (j) of this section.

(4) Municipally-owned utilities and distribution cooperatives that do not offer customer choice have no RPS requirement [~~are not obligated to purchase RECs~~]. However, regardless of whether the municipally-owned utility or distribution cooperative offers customer choice, a municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e) of this section may sell RECs generated by such a resource to retail entities [~~competitive retailers~~] as set forth in subsection (j) of this section.

(5) Except where specifically stated, the provisions of this section shall apply uniformly to all participants in the trading program.

(e) Facilities eligible for producing RECs in the renewable energy credits trading program. For a renewable facility to be eligible to produce RECs in the trading program it must be either a new facility or a small producer as defined in subsection (c) of this section and must also meet the requirements of this subsection.[~~:~~]

(1) A renewable energy resource must not be ineligible under subsection (f) of this section and must register pursuant to subsection (n) of this section.[~~;~~]

[~~(2) The facility's above-market costs must not be included in the rates of any utility, municipally-owned utility, or distribution cooperative through base rates, a power cost recovery factor (PCRF), stranded cost recovery mechanism, or any other fixed or variable rate element charged to end users;~~]

(2) [~~(3)~~] For a renewable energy technology that requires fossil fuel, the facility's use of fossil fuel must not exceed 2.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis.[~~;~~]

(3) [~~(4)~~] The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources before being metered can not be verified as delivered to Texas customers. A facility is not ineligible by virtue of the fact that the facility is a generation-offset, off-grid, or on-site distributed renewable facility if it otherwise meets the requirements of this section.[~~; and~~]

(4) [~~(5)~~] For a municipally owned utility operating a gas distribution system, any production or acquisition of landfill gas that is directly supplied to the gas distribution system is eligible to produce RECs based upon the conversion of the thermal energy in BTUs to electric energy in kWh using for the conversion factor the systemwide

average heat rate of the gas-fired units of the combined utility's electric system as measured in BTUs per kWh.

(5) [~~(6)~~] For industry-standard thermal technologies, the RECs can be earned only on the renewable portion of energy production. Furthermore, the contribution toward statewide renewable capacity megawatt goals from such facilities shall [~~would~~] be equal to the fraction of the facility's annual MWh energy output from renewable fuel multiplied by the facility's nameplate MW capacity.

(f) Facilities not eligible for producing RECs in the renewable energy credits trading program. A renewable facility is not eligible to produce RECs in the trading program if it is:

(1) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.05193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519;

(2) An existing facility that is not a small producer as defined in subsection (c) of this section; or

(3) A [~~An existing~~] fossil fueled generating plant that is repowered to use a renewable fuel, unless the plant is a small producer; or[~~.~~]

(4) A facility built with the assistance of a federal grant that was given for the purpose of developing that particular facility as a renewable energy demonstration project.

(g) Responsibilities of program administrator. The [~~No later than June 1, 2000, the~~] commission shall appoint [~~approve~~] an independent entity to serve as the trading program administrator. At a minimum, the program administrator shall perform the following functions:

(1) Create accounts that track RECs or compliance premiums for each participant in the trading program;

(2) Award RECs or compliance premiums to registered renewable energy facilities on a quarterly basis based on verified meter reads;

(3) Award [~~Assign~~] offsets to retail entities [~~competitive retailers~~] on an annual basis based on a nomination submitted by the retail entity [~~competitive retailer~~] pursuant to subsection (i)[~~(n)~~] of this section;

(4) Annually record the retirement of RECs or compliance premiums [~~retire RECs~~] that each retail entity submits [~~competitive retailer submits to meet its renewable energy requirement~~];

(5) Retire RECs at the end of each REC's three-year life;

(6) Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs;

(7) Create an exchange procedure where persons may purchase and sell RECs or compliance premiums. The exchange shall ensure the anonymity of persons purchasing or selling RECs or compliance premiums. The program administrator may delegate this function to an independent third party, subject to commission approval[~~. The commission shall approve any such delegation~~];

(8) Make public each month the total energy sales of retail entities [~~competitive retailers~~] in Texas for the previous month;

(9) Perform audits of generators participating in the trading program to verify accuracy of metered production data;

(10) Allocate the RPS requirement [~~renewable energy responsibility~~] to each retail entity [~~competitive retailer~~] in accordance with subsection (h) of this section; and

(11) Submit an annual report to the commission. The [~~Beginning with the program's first compliance period, the~~] program administrator shall submit a report to the commission on or before May [~~April~~] 15 of each calendar year. The report shall contain information pertaining to renewable energy power generators and retail entities [~~competitive retailers~~]. At a minimum, the report shall contain:

(A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each quarter for all capacity participating in the trading program or that was retired from service; and

(B) a listing of all retail entities [~~competitive retailers~~] participating in the trading program, each retail entity's RPS [~~competitive retailer's renewable energy credit~~] requirement, the number of offsets used by each retail entity [~~competitive retailer~~], the number of RECs [~~credits~~] retired by each retail entity [~~competitive retailer~~], the number of compliance premiums retired by each retail entity, a listing of all retail entities [~~competitive retailers~~] that were in compliance with the RPS [~~REC~~] requirement, a listing of all retail entities [~~competitive retailers~~] that failed to comply with the RPS [~~retire sufficient REC~~] requirement, and the deficiency of each retail entity [~~competitive retailer~~] that failed to retire sufficient RECs or compliance premiums to meet its RPS [~~REC~~] requirement.

(h) Allocation of RPS [~~REC purchase~~] requirement to retail entities [~~competitive retailers~~]. The program administrator shall allocate RPS [~~REC~~] requirements among retail entities [~~competitive retailers~~]. Any renewable capacity that is retired before January 1, 2015 [~~2009~~] or any capacity shortfalls that arise due to purchases of RECs from out-of-state facilities shall be replaced and incorporated into the allocation methodology set forth in this subsection. Any changes to the allocation methodology to reflect replacement capacity shall occur two compliance periods after the facility is [~~which the facility was~~] retired or the capacity shortfall occurs [~~occurred~~]. The program administrator shall use the following methodology to determine the total annual RPS [~~REC~~] requirement for a given year and the final RPS allocation [~~REC requirement~~] for individual retail entities [~~competitive retailers~~]:

(1) The total statewide RPS [~~REC~~] requirement for each compliance period shall be calculated in terms of MWh and shall be equal to the applicable capacity requirement set forth in this paragraph [~~renewable capacity target~~] multiplied by 8,760 hours per year, multiplied by the appropriate capacity conversion factor set forth in subsection (j) of this section. The renewable energy capacity requirements [~~targets~~] for the compliance period beginning January 1, of the year indicated shall be:

(A) 1,400 [~~400~~] MW of new resources in 2006 [~~2002~~];

(B) 1,400 [~~400~~] MW of new resources in 2007 [~~2003~~];

(C) 2,392 [~~850~~] MW of new resources in 2008 [~~2004~~];

(D) 2,392 [~~850~~] MW of new resources in 2009 [~~2005~~];

(E) 3,384 [~~1,400~~] MW of new resources in 2010 [~~2006~~];

(F) 3,384 [~~1,400~~] MW of new resources in 2011 [~~2007~~];

(G) 4,376 [~~2,000~~] MW of new resources in 2012; [~~2008; and~~]

(H) 4,376 MW of new resources in 2013;

(I) 5,000 MW of new resources in 2014; and

(J) [~~(H)~~] 5,000 [~~2,000~~] MW of new resources for each year after 2014 [~~in 2009 through 2019~~].

(2) The final RPS allocation [~~REC requirement~~] for an individual retail entity [~~competitive retailer~~] for a compliance period shall be calculated as follows:

(A) Each retail entity's [~~competitive retailer's~~] preliminary RPS allocation [~~REC requirement~~] is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all retail entities [~~competitive retailers~~], and multiplying that percentage by the total statewide RPS [~~REC~~] requirement for that compliance period.

(B) The adjusted RPS allocation [~~REC requirement~~] for each retail entity [~~competitive retailer~~] that is entitled to an offset is determined by reducing its preliminary RPS allocation [~~REC requirement~~] by the offsets to which it qualifies, as determined under subsection (i) of this section, with the maximum reduction equal to the retail entity's [~~competitive retailer's~~] preliminary RPS allocation [~~REC requirement~~]. The total reduction for all retail entities [~~competitive retailers~~] is equal to the total usable offsets for that compliance period.

(C) Each retail entity's [~~competitive retailer's~~] final RPS allocation [~~REC requirement~~] for a compliance period shall be increased to recapture the total usable offsets calculated under subparagraph (B) of this paragraph. The additional RPS allocation [~~REC requirement~~] shall be calculated by dividing the retail entity's [~~competitive retailer's~~] preliminary RPS allocation [~~REC requirement~~] by the total preliminary RPS allocation [~~REC requirement~~] of all retail entities [~~competitive retailers~~]. This fraction shall be multiplied by the total usable offsets for that compliance period and this amount shall be added to the retail entity's [~~competitive retailer's~~] adjusted RPS allocation [~~REC requirement~~] to produce the retail entity's [~~competitive retailer's~~] final RPS allocation [~~REC requirement~~] for the compliance period.

(3) Concurrent with determining final individual RPS allocations [~~competitive retailers' final REC requirements~~] for the current compliance period in accordance with this subsection, the program administrator [~~Program Administrator~~] shall recalculate the final RPS allocations [~~REC requirements~~] for the previous compliance periods, taking into account corrections to retail sales resulting from resettlements. The difference between a retail entity's [~~competitive retailer's~~] corrected final RPS allocation [~~REC requirement~~] and its original final RPS allocation [~~REC requirement~~] for the previous compliance periods shall be added to or subtracted from the retail entity's [~~retailer's~~] final RPS allocation [~~REC requirement~~] for the current compliance period.

(i) Nomination and award [~~calculation~~] of REC offsets.

(1) A REP, municipally-owned utility, G&T cooperative, distribution cooperative, or an affiliate of a REP, municipally-owned utility, or distribution cooperative, may apply offsets to meet all or a portion of its renewable energy purchase requirement, as calculated in subsection (h) of this section, only if those offsets were [~~are~~] nominated in a filing with the commission by June 1, 2001. [~~A G&T may nominate the combined offsets for itself and its member distribution cooperatives upon the presentation of a resolution by its Board authorizing it to do so.~~]

(2) The program administrator shall award offsets consistent with the commission's actions to verify [~~commission shall verify any~~] designations of REC offsets and with this section [~~notify the program administrator of its determination by December 31, 2001~~].

(3) REC offsets shall be equal to the average annual MWh output of an existing resource for the years 1991-2000 or the entire life of the existing resource, whichever is less.

(4) REC offsets qualify for use in a compliance period under subsection (h) of this section only to the extent that:

(A) The resource producing the REC offset has continuously since September 1, 1999 been owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative nominating the resource under paragraph (1) of this subsection or, if the resource has been committed under a contract that expired after September 1, 1999 and before January 1, 2002, it is owned by or its output was [~~has been~~] committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and

(B) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.

(5) If the production of energy from a facility that is eligible for an award of REC offsets [~~producing the REC offset energy~~] ceases for any reason, or if the power purchase agreement with the facility's owner (or successor in interest) that is referred to in paragraph (4)(A) of this subsection is no longer in effect, the retail entity shall [~~the competitive retailer may~~] no longer be awarded REC offsets related to the facility [~~claim the REC offset against its REC requirement~~].

(6) REC offsets shall not be traded.

(j) Calculation of capacity conversion factor. The capacity conversion factor used by the program administrator to allocate credits to retail entities [~~competitive retailers~~] shall be calculated during the fourth quarter of each odd numbered compliance year. The capacity conversion factor shall [~~as follows~~]:

(1) Reflect actual generator performance data associated with all renewable resources in the trading program for the previous two years;

(2) Be based on all renewable resources in the trading program for which at least 12 months of performance data are available;

(3) Represent a weighted average of generator performance; and

(4) Use all valid performance data that is available for each renewable resource, excluding data for testing periods prior to commercial operation.

[~~(1) The capacity conversion factor (CCF) shall be administratively set at 35% for 2002 and 2003, the first two compliance periods of the program.~~]

[~~(2) During the fourth quarter of the second compliance year (2003), the CCF shall be readjusted to reflect actual generator performance data associated with all renewable resources in the trading program. The program administrator shall adjust the CCF every two years thereafter and shall:~~]

[~~(A) be based on all renewable energy resources in the trading program for which at least 12 months of performance data is available;~~]

[~~(B) represent a weighted average of generator performance;~~]

[~~(C) use all valid performance data that is available for each renewable resource; and~~]

[~~(D) ensure that the renewable capacity goals are attained.~~]

(k) Production, [~~and~~] transfer, and expiration of RECs. The program administrator shall administer a trading program for renewable energy credits in accordance with the requirements of this subsection.

(1) The [~~A REC will be awarded to the~~] owner of a renewable resource shall earn one REC when a MWh is metered at that renewable resource. [~~A generator producing 0.5 MWh or greater as its last unit generated should be awarded one REC on a quarterly basis.~~] The program administrator shall record the energy in [~~amount of~~] metered MWh and credit the REC account of the renewable resource that generated the energy on a quarterly basis. Quarterly production shall be rounded to the nearest whole MWh, with fractions of 0.5 MWh or greater rounded up.

(2) The transfer of RECs between parties shall be effective only when the transfer is recorded by the program administrator.

(3) The program administrator shall require that RECs be adequately identified prior to recording a transfer and shall issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information shall be provided:

(A) identification of the parties;

(B) REC serial number, REC issue date, and the renewable resource that produced the REC;

(C) the number of RECs to be transferred; and

(D) the transaction date.

(4) A retail entity [~~competitive retailer~~] shall surrender RECs to the program administrator for retirement from the market in order to meet its RPS requirement [~~REC allocation~~] for a compliance period. The program administrator will document all REC retirements annually.

(5) On or after each April 1, the program administrator will retire RECs that have not been retired by retail entities [~~competitive retailers~~] and have reached the end of their three-year life.

(6) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of credits are accurately recorded.

(7) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance year in which the credits are generated. All RECs shall have a life of three compliance periods, after which the program administrator will retire them from the trading program. RECs that have exceeded their life shall not be used to satisfy an RPS requirement.

(8) Each REC that is not used in the year of its creation may be banked and is valid for the next two compliance periods.

(l) Target for renewable technologies other than wind power. In order to meet the target of at least 500 MW of the total installed renewable capacity after September 1, 2005, coming from a renewable energy technology other than a source using wind energy as set forth in subsection (a)(1) of this section, the program administrator shall award compliance premiums to certified REC generators other than those powered by wind that were installed and certified by the commission pursuant to subsection (n) of this section after September 1, 2005. A compliance premium is created in conjunction with a REC.

(1) Compliance premiums shall be awarded as follows:

(A) For eligible non-wind renewable technologies, one compliance premium shall be awarded for each REC awarded; and

(B) For eligible non-wind renewable technologies that have no air emissions, two compliance premiums shall be awarded for each REC awarded.

(2) Except as provided in this subsection, the award, retirement, trade, and registration of compliance premiums shall follow the requirements of subsections (k) and (m) of this section.

(3) A compliance premium may be used by any entity toward its RPS requirement pursuant to subsection (h) of this section.

(4) The program administrator shall increase the statewide RPS requirement calculated for each compliance period pursuant to subsection (h)(1) of this section by the number of compliance premiums retired during the previous compliance period.

(m) [~~(l)~~] Settlement process. The [~~Beginning in January 2003, the~~] first quarter following the compliance period shall be the settlement period during which the following actions shall occur:

(1) By January 31, the program administrator will notify each retail entity [~~competitive retailer~~] of its total RPS [~~REC~~] requirement for the previous compliance period as determined pursuant to subsection (h) of this section.

(2) By March 31, each retail entity shall [~~competitive retailer must~~] submit credits or compliance premiums to the program administrator from its account equivalent to its RPS [~~REC~~] requirement for the previous compliance period. If the retail entity does not submit sufficient [~~competitive retailer has insufficient~~] credits or compliance premiums [~~in its account~~] to satisfy its obligation, [~~and this shortfall exceeds the applicable deficit allowance as set forth in subsection (m)(2) of this section,~~] the retail entity [~~competitive retailer~~] is subject to the penalty provisions in subsection (o) of this section.

(3) The program administrator may request the commission to adjust the deadlines set forth in this section if changes to the ERCOT settlement calendar or other factors affect the availability of reliable retail sales data.

[~~(m) Trading program compliance cycle.~~]

[~~(1) The first compliance period shall begin on January 1, 2002 and there will be 18 consecutive compliance periods. Early banking of RECs is permissible and may commence no earlier than July 1, 2001. The program's first settlement period shall take place during the first quarter of 2003.~~]

[~~(2) A competitive retailer may incur a deficit allowance equal to 10% of its REC requirement in 2002 and 2003 (the first two compliance periods of the program). This 10% deficit allowance shall not apply to entities that initiate customer choice after 2003. During the first settlement period, each competitive retailer will be subject to a penalty for any REC shortfall that is greater than 10% of its REC requirement under subsection (h) of this section. During the second settlement period, each competitive retailer will be subject to the penalty process for any REC shortfall greater than 10% of the second year REC allocation. All competitive retailers incurring a 10% deficit pursuant to this subsection must make up the amount of RECs associated with the deficit in the next compliance period.~~]

[~~(3) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance year in which the credits are generated. All RECs shall have a life of three compliance periods, after which the program administrator will retire them from the trading program.~~]

[~~(4) Each REC that is not used in the year of its creation may be banked and is valid for the next two compliance years.~~]

[~~(5) A competitive retailer may meet its renewable energy requirements for a compliance period with RECs issued in or prior to that compliance period which have not been retired.~~]

(n) Certification [~~Registration and certification~~] of renewable energy facilities. The commission shall [~~register and~~] certify all renewable facilities that will produce either REC offsets, [~~or~~] RECs, or compliance premiums for sale in the trading program. To be awarded RECs, or REC offsets, or compliance premiums, a power generator must complete the certification [~~registration~~] process described in this subsection. The program administrator shall not award offsets, RECs, or compliance premiums [~~or credits~~] for energy produced by a power generator before it has been certified by the commission.

(1) The designated representative of the generating facility shall file an application with the commission on a form approved by the commission for each renewable energy generation facility. At a minimum, the application shall include the location, owner, technology, and rated capacity of the facility and shall demonstrate that the facility meets the resource eligibility criteria in subsection (e) of this section. Any subsequent changes to the information in the application shall be filed with the commission within 30 days of such changes.

(2) No later than 30 days after the designated representative files the certification form with the commission, the commission shall inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission shall either certify the renewable facility as eligible to receive [~~either~~] RECs, [~~or~~] offsets, or compliance premiums, or describe any insufficiencies to be remedied. If the application is contested, the time for acting is extended for such time as is necessary for commission action [~~by 30 days~~].

(3) Upon receiving notice of certification of new facilities, the program administrator shall create an REC account for the designated representative of the renewable resource.

(4) The commission or program administrator may make on-site visits to any certified facility, and the commission shall [~~unit of a renewable energy resource and may~~] decertify any facility [~~unit~~] if it is not in compliance with the provisions of this section [~~subsection~~].

(5) A decertified renewable generator may not be awarded RECs. However, any RECs awarded by the program administrator and transferred to a retail entity [~~competitive retailer~~] prior to the decertification remain valid.

(o) Penalties and enforcement. If by April 1 of the year following a compliance year the program administrator determines that a real entity [~~it is determined that a competitive retailer with an allocated REC purchase requirement~~] has insufficient credits to satisfy its allocation, the retail entity [~~competitive retailer~~] shall be subject to an administrative penalty of $50 per MWh pursuant to PURA §15.023 [~~the administrative penalty provisions of PURA §15.023 as specified in this subsection~~].

[~~(1) Except as provided in paragraph (4) of this subsection, a penalty will be assessed for that portion of the deficient credits.~~]

[~~(2) The penalty shall be the lesser of $50 per MWh. or, upon presentation of suitable evidence of market value by the competitive retailer, 200% of the average market value of credits for that compliance period.~~]

[~~(3) There will be no obligation on the competitive retailer to purchase RECs for deficits, whether or not the deficit was within or was not within the competitive retailer's reasonable control, except as set forth in subsection (m)(2) of this section.~~]

[~~(4) In the event that the commission determines that events beyond the reasonable control of a competitive retailer prevented it from meeting its REC requirement there will be no penalty assessed.~~]

[~~(5) A party is responsible for conducting sufficient advance planning to acquire its allotment of RECs. Failure of the spot or short-term market to supply a party with the allocated number of RECs shall not constitute an event outside the competitive retailer's reasonable control. Events or circumstances that are outside of a party's reasonable control may include weather-related damage, mechanical failure, lack of transmission capacity or availability, strikes, lockouts, actions of a governmental authority that adversely effect the generation, transmission, or distribution of renewable energy from an eligible resource under contract to a purchaser.~~]

(p) Microgenerators and REC aggregators. A REC aggregator may manage the participation of multiple microgenerators in the REC trading program. The program administrator shall assign to the REC aggregator all RECs accrued by the microgenerators who are under a REC management contract with the REC aggregator.

(1) The microgenerator's units shall be installed by a technician who is currently certified either by the unit's manufacturer or by a recognized industry certification organization.

(2) Notwithstanding subsection (e)(4) of this section, a REC aggregator may use either of the following methods for reporting generation to the program administrator, as long as the same method is used for each microgenerator in an aggregation unit, as defined by the REC aggregator. A REC aggregator may have more than one aggregation and may choose either method for each aggregation unit.

(A) A generating unit may have a meter that transmits actual generation data to the program administrator using protocols and procedures determined by the program administrator. Such protocols and procedures shall require that actual data be collected and transmitted within a reasonable time. REC aggregators using this method shall be awarded one REC for every MWh generated.

(B) The REC aggregator may provide the program administrator with sufficient information for the program administrator to estimate with reasonable accuracy the output of each unit, based on known or observed information that correlates closely with the generation output. REC aggregators using this method shall be awarded one REC for every 1.25 MWh generated. After installing the unit, the certified technician shall provide the microgenerator, the REC aggregator, and the program administrator the information required by the program administrator pursuant to this paragraph (2) of this subsection.

(3) REC aggregators shall register with the commission and the program administrator and also register to participate in the REC trading program.

(4) A microgenerator participating in the REC trading program individually without the assistance of a REC aggregator shall comply with the requirements of this subsection.

(5) All microgenerator units that are connected to the grid or that are installed with the capability of connecting to the grid shall comply with the applicable requirements of §25.211 and §25.212, of this title (relating to Transmission and Distribution Applicable to all Electric Utilities).

[~~(p) Renewable resources eligible for sale in the Texas wholesale and retail markets. Any energy produced by a renewable resource may be bought and sold in the Texas wholesale market or to retail customers in Texas and marketed as renewable energy if it is generated from a resource that meets the definition in subsection (c)(14) of this section.~~]

[~~(q) Periodic review. The commission shall periodically assess the effectiveness of the energy-based credits trading program in this section to maximize the energy output from the new capacity ad-~~

~~ditions and ensure that the goal for renewable energy is achieved in the most economically-efficient manner. If the energy-based trading program is not effective, performance standards will be designed to ensure that the cumulative installed renewable capacity in Texas meets the requirements of PURA §39.904.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 29, 2007.

TRD-200700232
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 936-7223

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS
SUBCHAPTER J. COSTS, RATES AND TARIFFS

16 TAC §26.223

The Public Utility Commission of Texas (commission) proposes an amendment to §26.223, relating to Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates. Current §26.223(e) mandates that the commission re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates every two years. The current re-calculation methodology requires that each incumbent local exchange carrier (ILEC) provide the commission with that ILEC's total actual originating and terminating minutes of use for the most recent 12-month period. Chapter 65 of the Public Utility Regulatory Act (PURA) contemplates the deregulation of numerous markets of large ILECs. Chapter 65 requires that the large ILECs that have chosen to transition to deregulation substantially (in the aggregate) reduce their minute of use charges associated with switched access each year for three successive years. Under PURA §65.202, a transitioning ILEC is required to reduce its intrastate switched access rates by approximately one third of the difference between the switched access rates it charges for intrastate minutes of use and interstate minutes of use. Such ILEC is required to make such reductions each year on July 1, beginning on July 1, 2006. Enactment of the SB 5 amendments to PURA Chapter 65 necessitates changes to the manner and timing by which the commission recalculates usage sensitive switched access rates under §26.223. Unless certain provisions of §26.223 are harmonized with the provisions of PURA Chapter 65, the three largest ILECs will be required to lower their intrastate switched access rates annually while the weighted statewide average composite usage sensitive intrastate switched access rates remains unchanged. The proposed amendments will change the timeline for completion of the task of developing new statewide average rates, will establish new dates for submission of CCN holder access charge information necessary to calculate the rates, and will establish new due dates for industry compliance submissions associated with the recalculation of the statewide average composite usage sensitive switched access rates. Additionally, unnecessary or outdated sections related to the initial implementation of this rule have also been deleted. Project Number 33060 is assigned to this proceeding.

Mark Hallmark, Attorney, Legal Division, and John Costello, Senior Policy Specialist, Infrastructure Reliability Division, have determined that, for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Hallmark and Mr. Costello have determined that, for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be the harmonization of the impact of changes in ILEC access charges brought about by SB 5 with the commission's re-calculation of weighted statewide average composite usage sensitive intrastate switched access rates. Harmonizing PURA Chapter 65 with §26.223 will ultimately prohibit a competitive carrier that chooses to adopt these statewide average composite switched access rates from charging excessive usage sensitive switched access rates. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Hallmark and Mr. Costello have also determined that, for each year of the first five years the proposed section is in effect, there should be no effect on a local economy; and therefore, no local employment impact statement is required under the Administrative Procedure Act (APA), Texas Government Code, §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested by a party or if deemed necessary by Staff, pursuant to the Administrative Procedure Act, Texas Government Code, §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication. Parties of record will be notified at least one week in advance of any scheduled public hearing in this rulemaking.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 33060.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.002 and §14.052, and specifically, PURA, §52.155 which grant(s) the commission all jurisdiction necessary to enforce the prohibition of excessive access charges and PURA, Chapter 65, Subchapter E, that relates to the reduction of switched access rates by transitioning companies.

Cross Reference to Statutes: Public Utility Regulatory Act, §§14.002, 15.052, 52.155, and §§65.201 - 65.203.

§26.223. Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates.

(a) - (d) (No change.)

(e) Statewide average composite rates. [~~The commission shall establish weighted statewide average composite usage sensitive intrastate switched access rates within 60 days of the effective date of this section.~~] Weighted statewide average composite usage sensitive intrastate switched access rates will be developed based upon the submission of CCN holders' compliance filings pursuant to subsection (g) of this section.

(1) Methodology. The commission shall use [~~employ~~] the following information and methodology for development of the weighted statewide average composite usage sensitive intrastate switched access rates separately for each originating and for each terminating rate element category in subsection (g)(1) - (6) of this section [~~(A) - (F)~~]:

(A) - (D) (No change.)

(E) Additional revenues submitted under subsection (g)(8) of this section for monthly rate elements associated with switched access shall be converted to MOU rates using the switching MOUs provided by the CCN holder. The converted MOU rates shall be used to revise the weighted statewide average composite usage sensitive intrastate switched access rates calculated pursuant to subparagraph (D) of this paragraph.

(2) Recalculation.

(A) The commission shall re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates annually until June, 2010 [~~biennially~~] based upon the submissions of the CCN holders, as required in subsection (g) of this section. The commission shall endeavor to complete such recalculation by [~~re-calculated rates will become effective~~] November 15 [~~1~~] of each [~~that~~] year.

(B) Any certificated telecommunications utility may file a petition requesting that the commission re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates at any time[~~, but no sooner than six months from the effective date of this section or most recent re-calculation~~]. The commission shall grant the petition for [~~initiate~~] re-calculation if it concludes that the petition has provided just cause for re-calculation.

(C) (No change.)

(D) After June 2010, the commission shall recalculate the weighted statewide average composite usage sensitive intrastate switched access rates biennially. The commission shall endeavor to complete such recalculation by November 15.

(f) (No change.)

(g) Requirement for CCN holders compliance submissions.

[~~(1) Within 30 days from the effective date of this section, all CCN holders must provide the following intrastate data to the commission as a compliance filing:~~]

[~~(A) The current tariffed rate for originating and terminating CCL.~~]

[~~(B) The current tariffed rate for originating and terminating LS.~~]

[~~(C) The current tariffed rate for originating and terminating TR.~~]

[~~(D) The current tariffed rate for originating and terminating TS.~~]

[~~(E) The current average per minute rate for originating and terminating TST.~~]

[~~(F) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).~~]

[~~(G) The total actual originating and terminating MOUs for the most recent 12 month period for each rate element in subparagraphs (A) - (F) of this paragraph.~~]

[~~(2)~~] Until June, 2010 [~~Biennially~~], all CCN holders must provide the following intrastate data to the commission as a compliance filing on an annual basis; and as of June, 2010 and thereafter on a biennial basis, by September 15 [~~by June 1 of the year~~]:

(1) [~~(A)~~] The current tariffed rate for originating and terminating CCL.

(2) [~~(B)~~] The current tariffed rate for originating and terminating LS.

(3) [~~(C)~~] The current tariffed rate for originating and terminating TR.

(4) [~~(D)~~] The current tariffed rate for originating and terminating TS.

(5) [~~(E)~~] The current average per minute rate for originating and terminating TST.

(6) [~~(F)~~] The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).

(7) [~~(G)~~] The total actual originating and terminating MOU for the most recent 12-month period (August 1 through July 31) for each rate element in paragraphs (1) - (6) [~~subparagraphs (A) - (F)~~] of this subsection [~~paragraph~~].

(8) The total revenues for the most recent 12-month period (August 1 through July 31) received from any switched access monthly rate element used to transport or switch the access traffic listed in paragraphs (1) - (6) of this subsection that may be specifically attributable to the element identified (*e.g.*, local switching, transport).

(h) Requirements of COA/SPCOA holders compliance submissions.

[~~(1) Within 90 days of the effective date of this section, each COA/SPCOA holder shall either:~~]

[~~(A) file an application under subsection (f) of this section;~~]

[~~(B) file compliance tariffs/price lists effective 125 days from the effective date of this section containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;~~]

[~~(C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the weighted statewide average composite usage sensitive switched access rates established by the commission effective 125 days from the effective date of this section; or~~]

[(D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.]

(1) [(2)]No [If the commission subsequently recalculates the weighted statewide average composite usage sensitive switched access rates, no] later than 20 [30] days after the effective date of the commission order recalculating[recalculates] the weighted statewide average composite usage sensitive switched access rates, COA/SPCOA holders shall [either]:

(A) file an application under subsection (f) of this section;or

(B) file compliance tariffs/price lists to be effective 10 [45] days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;or

(C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the recalculated weighted statewide average composite usage sensitive switched access rates established by the commission to be effective 10 [45] days from the filing date of the compliance tariffs/price sheets; or

(D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.

(2) [(3)] If a COA/SPCOA holder establishes usage sensitive intrastate switched access rates pursuant to paragraphs (1)(B) [or (2)(B)] of this subsection and the underlying CCN holder(s) whose rates were the basis for the COA/SPCOA holder's usage sensitive intrastate switched access rates are modified, no later than 20 [30] days after said CCN holder's rates are modified, the COA/SPCOA holder shall [either]:

(A) file an application under subsection (f) of this section; or

(B) file compliance tariffs/price lists to be effective 10 [45] days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;or

(C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the most recent commission established weighted statewide average composite usage sensitive switched access rates established by the commission to be effective 10 [45] days from the filing date of the compliance tariffs/price sheets; or

(D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.

[(i) Texas Register notice. Notice shall be published in the Texas Register at the time of a CCN holder's application with the commission to revise its usage sensitive intrastate switched access rates or when the commission re-calculates the weighted statewide average composite usage sensitive intrastate switched access rates.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2007.

TRD-200700216
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 505. THE BOARD

22 TAC §505.12

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.12 concerning Enforcement Committees.

The amendment to §505.12 will change the name of the major case enforcement committee and constructive enforcement committee to the technical standards review II committee.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not impose additional costs.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not reduce costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be negligible because the amendment does not affect revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clarification of the purpose of the original major case enforcement committee.

The probable economic cost to persons required to comply with the amendment will be negligible because the amendment does not require compliance.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on March 12, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not affect small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an

adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§505.12. Enforcement Committees.

(a) The behavioral enforcement committee, technical standards review I committee, and technical standards review II committee [~~major case enforcement committee and constructive enforcement committee~~] shall each be one of the board's enforcement committees.

(b) A member of the board and an enforcement committee shall recuse himself and take no part in the board's vote on the final disposition in any case considered by that enforcement committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2007.

TRD-200700219
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 305-7848

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CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

22 TAC §518.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.3 concerning Violation of a Cease and Desist Order.

The amendment to §518.3 will transfer responsibility for determining violations of Cease and Desist Orders from the Executive Committee to the Executive Director and remove certain time limits for determining administrative penalties and issuing proposals for decision.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not impose additional costs.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not reduce costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be negligible because the amendment does not affect revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more efficient process for determining violations of Cease and Desist Orders.

The probable economic cost to persons required to comply with the amendment will be negligible because the amendment does not require compliance.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on March 12, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not affect small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§518.3. Violation of a Cease and Desist Order.

(a) Whenever the board, through its Executive Director, [~~Committee,~~] determines that a person subject to a cease and desist order issued by the board has violated that order, the board, through its Executive Director, [~~Committee,~~] after notice and an opportunity for a hearing, may assess an administrative penalty , after consulting with the board's presiding officer, against the person in violation in accordance with the guidelines contained in §518.4 of this title (relating to Administrative Penalty Guidelines for Violations of Cease and Desist Orders).

(b) The board shall give notice of the assessment of an administrative penalty in accordance with §901.553 of the Act. The person may pay the penalty or request a hearing in accordance with §901.554 of the Act. A hearing under this rule shall be conducted in the manner

of a contested case pursuant to the Act, the APA, the board's rules and SOAH's rules; provided that the time limits provided in this rule control.

(c) [~~Upon the filing of a request to docket the case, SOAH shall set the matter for hearing no later than 20 days from the date of the request. The ALJ shall deliver a PFD to the Executive Committee no later than five days after the completion of the hearing. The Executive Committee shall make its determination as to whether to assess an administrative penalty no later than five days after receipt of the PFD.~~] If a penalty is assessed the person may pay or appeal the board's order in accordance with §901.556 of the Act.

[~~(d) Pursuant to Chapter 551 of the Texas Government Code (relating to Open Meetings), the Executive Committee may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the Executive Committee is inconvenient for any member of the Committee.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.142

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.142 concerning Program Time Credit Measurement.

The amendment to §523.142 will remove the current method for determining credit for self-study programs.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be negligible because the amendment does not add costs.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be negligible because the amendment does not reduce costs.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be negligible because the amendment does not affect revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clarification regarding how self-study credit shall be determined.

The probable economic cost to persons required to comply with the amendment will be negligible because the amendment does not impose economic costs upon persons required to comply with it.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on March 12, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not affect small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.142. Program Time Credit Measurement.

(a) All programs should be measured in terms of 50-minute contact hours. The shortest recognized program should consist of one contact hour. A contact hour is 50 minutes of continuous participation in a group program. Under this standard, a credit hour is granted only for each contact hour.

(b) For continuous conferences and conventions, when individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three contact hours.

(c) For university or college courses, each semester hour credit should equal 15 hours toward the requirement. A quarter hour credit should equal 10 hours.

(d) Self-study programs should be pre-tested to determine average completion time. [~~If the self-study course has been approved by the Quality Assurance Service (QAS) of the National Association of State Boards of Accountancy (NASBA), the credit allowed shall be hour-for-hour credit. Otherwise, one half of the average completion time is the maximum credit to be allowed.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER G. TRANSPORTATION PLANNING

30 TAC §114.260

The Texas Commission on Environmental Quality (commission) proposes an amendment to §114.260 and corresponding revisions to the Transportation Conformity State Implementation Plan (SIP) for Texas Nonattainment and Maintenance Areas.

If adopted, the revisions would be submitted to the United States Environmental Protection Agency (EPA) as a revision to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The Federal Clean Air Act (FCAA) Amendments of 1990 as codified in 42 United States Code (USC), §§7401 *et seq*. required each state to submit a revision to its SIP by November 25, 1994, establishing enforceable criteria and procedures for making conformity determinations for metropolitan transportation plans, transportation improvement programs, and projects funded by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA). Final rules regarding conformity requirements were published by EPA on November 24, 1993. The Texas SIP revision that incorporated conformity requirements was adopted October 19, 1994, and approved by EPA November 8, 1995. EPA has amended the federal transportation conformity rule eight times: August 7, 1995; November 14, 1995; August 15, 1997; April 10, 2000; August 6, 2002; July 1, 2004; May 6, 2005; and March 10, 2006. The commission previously incorporated the federal changes up to, and including, the 2004 amendments. The commission is now updating its SIP and rule to incorporate the May 6, 2005, and March 10, 2006, federal amendments. In addition to the 2005 and 2006 federal amendments, changes to the transportation conformity federal rule were enacted with passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was signed into law August 10, 2005. Furthermore, EPA issued guidance in May 1999, that a state should spell out in its SIP when a regionally significant, non-federal project is considered *adopted or approved* by a non-federal entity. The addition of these changes to the existing state rules would align the state rule with the current federal requirements and would address when a non-federal, regionally significant project is considered *adopted or approved* by a non-federal entity. Lastly, this proposed rulemaking would make administrative and grammatical changes and corrections to the existing rule language.

Transportation conformity is required under FCAA, §176(c) to ensure that federally supported highway and transit project activities are consistent with the purpose of the state's SIP. Conformity applies to areas designated nonattainment and those redesignated to attainment after 1990 with a maintenance plan developed under the FCAA. Conformity to the purpose of the SIP means that transportation activities would not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant National Ambient Air Quality Standards (NAAQS). EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP.

EPA amended the transportation conformity rule on May 6, 2005. The *Transportation Conformity Rule Amendments for the New $PM_{2.5}$ NAAQS: $PM_{2.5}$ Precursors* (70 FR 24280) specifies the transportation-related $PM_{2.5}$ precursors and when they apply in transportation conformity determinations in $PM_{2.5}$ (particulate matter) nonattainment and maintenance areas. The proposal would incorporate $PM_{2.5}$ precursors in the state rule and make a technical correction to a United States Department of Transportation (U.S. DOT) planning regulation cross-reference. EPA's 2005 revisions were codified in 40 Code of Federal Regulations (CFR) Part 93. Sections revised were §§93.102, 93.105, and 93.119.

EPA also amended the transportation conformity rule on March 10, 2006: the *$PM_{2.5}$ and PM_{10} Hot-Spot Analysis in Project Level Transportation Conformity Determinations for the New $PM_{2.5}$ and Existing PM_{10} National Ambient Air Quality Standards Final Rule* (71 FR 12468). The proposal would delete the current quantitative PM_{10} and $PM_{2.5}$ hot-spot analysis requirement from the state's conformity consultation requirements. The federal amendments were codified in 40 CFR Part 93. Sections revised were §§93.101, 93.105, 93.109, 93.116, 93.123, 93.125, 93.126, and 93.127.

The transportation conformity provisions in the SAFETEA-LU streamlined the requirements for state conformity SIPs. Prior to enactment of SAFETEA-LU, states were required to address all of the federal conformity rule's provisions in their conformity SIPs. Most of the sections of the federal rule were required to be copied verbatim from the federal rule into a state's SIP, as previously required under 40 CFR §51.390(d). Now, under SAFETEA-LU, states are required to address and tailor only the following three sections of the conformity rule in their conformity SIPs: 1.) 40 CFR §93.105, which addresses consultation procedures; 2.) 40 CFR §93.122(a)(4)(ii), which requires that written commitments to control measures that are not included in a Metropolitan Planning Organization's transportation plans must be obtained prior to a conformity determination and that such commitments must be fulfilled; and 3.) 40 CFR §93.125(c), which requires that written commitments to mitigation measures must be obtained prior to a project-level conformity determination and that project sponsors must comply with such commitments.

In May 1999, EPA issued guidance titled *Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision*

addressing which projects could move forward during a conformity lapse. EPA recommended that states decide through the interagency consultation process when a regionally significant, non-federal project is considered *adopted or approved* by a non-federal entity that routinely receives funds from the FHWA or FTA. The interagency consultation group for Texas, the Technical Work Group (TWG), has agreed on language that is included in this proposed rulemaking. The commission is also proposing administrative and grammatical changes and corrections to the existing rule language in order to be consistent with current agency style and format. The commission is also proposing to renumber certain parts of §114.260 to make adjustments for the proposed deletions and additions throughout the rule.

SECTION DISCUSSION

§114.260. Transportation Conformity.

The proposed revisions to §114.260(a) would change the phrase *in the requirements* and replace it with *certain requirements*. The last sentence in this subsection would be changed from, *It includes policy, criteria, and procedures to demonstrate and assure conformity of transportation planning activities with the state implementation plan (SIP)* and replaced with, *This section addresses the consultation process and the written commitment requirements for control measures and mitigation measures that are used to help demonstrate and assure conformity of transportation planning activities to the state implementation plan (SIP)* to more clearly describe the transportation conformity streamlining provisions in SAFETEA-LU.

The proposed revisions to §114.260(b) would add the term *criteria* in the first sentence to change the phrase *transportation-related pollutants* to *transportation-related criteria pollutants*. The purpose of this change is to clarify that the applicable pollutants are criteria pollutants. The second sentence would add *transportation-related criteria* to form the phrase *transportation-related criteria pollutants*. The word *include* is replaced with *are* and the precursor pollutants are listed in a separate sentence, which is then amended by adding $PM_{2.5}$ as a precursor and referring to 40 CFR §93.102. The addition of $PM_{2.5}$ to the sentence reflects the substantive change in EPA's May 6, 2005, final rule, the *Transportation Conformity Rule Amendments for the New $PM_{2.5}$ National Ambient Air Quality Standard: $PM_{2.5}$ Precursors* (70 FR 24280). The purpose of referring to 40 CFR §93.102 is to indicate the applicable precursors to be analyzed depending on the characteristics of the nonattainment area. Finally, the last sentence is deleted because its reference to nonattainment area boundaries is not needed in the rule language.

The proposed revisions to §114.260(c) would delete the reference to 40 CFR Part 93, Subpart A, (62 FR 43780), and add the replacement reference 40 CFR §93.122(a)(4)(ii) and 40 CFR §93.125(c). The SAFETEA-LU amendments at 42 USC, §7506(c)(4)(E) direct that only these two sections plus CFR §93.105 need to be in the state conformity rule. The addition of these three sections would streamline the requirements for state conformity SIPs.

The proposal would revise §114.260(d)(2)(A)(i) to delete the rule language *Air Quality Planning and Implementation Division* and replace it with *executive director*. The proposal would revise §114.260(d)(2)(A)(ii) to delete the word *involvement* and replace it with *participation* and would change the 23 CFR reference *§450.316(b)(1)* to *Part 450*. The proposal would revise §114.260(d)(2)(A)(iii) to delete *by the Metropolitan Planning Rule* and change the 23 CFR reference *§450.316(b)(1)* to *Part 450*. The proposal would revise §114.260(d)(2)(A)(v) to delete the word *involvement* and replace it with *participation*, and would delete §114.260(d)(2)(A)(vii). The proposal would revise §114.260(d)(2)(B)(v) to correct the reference to 40 CFR §93.109(g)(2)(iii) with a reference to 40 CFR §93.109(l)(2)(iii). The proposal would revise §114.260(d)(3)(A) to delete the word *involvement* and replace it with *participation*. The proposal would revise §114.260(d)(3)(C) to delete the words *identified as the Technical Working Group for Mobile Emissions* and would delete the last sentence, *The function of this working group may be delegated to an existing group with similar composition and purpose*. The proposal would revise §114.260(d)(5) to delete the word *involvement* and replace it with *participation* and renumber the CFR reference for the fee schedule for public inspection and copying. These proposed revisions would align the state rule with the federal rule; allow the executive director to delegate authority to staff without explicitly naming the designee; provide flexibility to the Technical Work Group; and bring existing rule language into agreement with Texas Register requirements, agency format guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual, August 2006*.

The proposed new §114.260(e) would address when a regionally significant, non-federal project is considered *adopted* or *approved* by a non-federal agency. This section was added to clarify the approval and adoption process of a non-federal, regionally significant project. In the event of a transportation conformity lapse, the provision may allow certain project phases to continue.

The proposed amendment to §114.260(f) would delete the words *begins on* and replace them with *for transportation conformity determinations that begin the interagency consultation process after*. The purpose of this change is to make clear that compliance with this rule revision applies at the beginning of the interagency consultation process.

The proposed revision would make administrative and grammatical changes and corrections to the existing rule language in order to be consistent with current agency style and format guidelines. The proposal would also renumber certain parts of §114.260 to make adjustments for the proposed deletions and additions throughout the rule.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or other units of state or local government as a result of the administration or enforcement of the proposed rule.

The proposed rulemaking would incorporate recent federal transportation conformity revisions into the state's SIP, including those from the surface transportation reauthorization act of 2005, SAFETEA-LU. Transportation conformity is an FCAA requirement ensuring that federally supported highway and transit projects conform to each state's SIP.

In addition to the SAFETEA-LU revisions, the rulemaking would also incorporate previous federal transportation conformity revisions and guidance that includes: 1.) May 1999 EPA guidance that asked states to incorporate into their SIPs the process used to determine when a regionally significant, non-federal project is considered *adopted or approved* by a non-federal entity. This clarifies when certain projects, like toll roads, can move forward during a conformity lapse; 2.) EPA rules that added transporta-

tion-related $PM_{2.5}$ precursors to the transportation conformity regulations and made a technical correction to a cross-reference of the U.S. DOT planning regulations; and 3.) EPA rules that deleted a previous consultation requirement for quantitative PM_{10} and $PM_{2.5}$ hot-spot analysis.

The transportation conformity rule is only being revised to reflect existing language in the federal transportation conformity rule and other federal transportation conformity-related rules and guidance. Therefore, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of the enforcement and administration of the proposed rule.

PUBLIC BENEFITS AND COSTS

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state and federal law, continued conformity with the SIP, and continued protection of public health and the environment through improved air quality.

The transportation conformity rule is only being revised to reflect existing language in the federal transportation conformity rule and other federal transportation conformity-related rules and guidance. Therefore, no fiscal implications are anticipated for businesses or individuals as a result of the enforcement and administration of the proposed rule.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of the Texas Government Code, §2001.0225, and determined that the proposed rulemaking meets the definition of a *major environmental rule* as defined in that statute. A *major environmental rule* means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments meet the definition of a *major environmental rule* because the transportation conformity requirements are specifically intended to protect the environment and/or reduce risks to human health, and may have material affects on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Federal transportation conformity requirements subject all nonattainment and maintenance areas to demonstrate conformity with specific emissions budgets, or be subject to loss of highway or other transportation funding. The proposed amendments to §114.260 will incorporate recent federal transportation conformity revisions into the state's SIP, including those from the surface transportation reauthorization act of 2005, SAFETEA-LU. Transportation conformity is an FCAA requirement ensuring that federally supported highway and transit projects conform to each state's SIP. Additionally, the proposed amendments to §114.260 will reflect existing language in the federal transportation conformity rule and other federal transportation conformity-related rules and guidance.

The proposed rulemaking does not, however, meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The proposed rulemaking would implement requirements of the FCAA and SAFETEA-LU. Under 42 USC, §7506, each SIP must contain criteria and procedures for consultation, and enforcement and enforceability in accordance with the EPA's criteria and procedures for consultation, enforcement, and enforceability.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded *based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application*. The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the goals of the FCAA; thus, states must develop programs and strategies to help ensure that those goals are met. However, in this instance, the FCAA is clear in requiring that states comply with EPA's criteria and procedures for consultation, enforcement, and enforceability. EPA's transportation conformity rule and SAFETEA-LU provide specific requirements and limited flexibility that must be met by states. Because of the ongoing need to address the requirements of 42 USC, §§7401, *et seq.*, the commission routinely proposes and adopts SIP rules. As discussed elsewhere in this preamble, states are required to incorporate requirements for transportation conformity in compliance with EPA's transportation conformity rule and SAFETEA-LU. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand

the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the proposed rule may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that *when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation*. *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of *substantial compliance*. The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the proposed rulemaking is to incorporate recent federal transportation conformity revisions into the state's SIP, including those from SAFETEA-LU, in addition to reflecting already existing changes in the federal transportation conformity rule and other federal transportation conformity-related rules and guidance. There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the proposed rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act (TCAA)), and the Texas Water Code (TWC), which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.012, 382.017, and 382.208. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because although the proposed rulemaking meets the definition of a *major environmental rule*, it does not meet any of the four applicability requirements.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the proposed rulemaking is to incorporate recent federal transportation conformity revisions into the state's SIP, including those from SAFETEA-LU, in addition to reflecting already existing changes in the federal transportation conformity rule and other federal transportation conformity-related rules and guidance, as discussed elsewhere in this preamble. Under FCAA, 42 USC, §7506, each SIP must contain criteria and procedures for consultation, and enforcement and enforceability in accordance with the EPA's criteria and procedures for consultation, enforcement and enforceability.

The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). For this reason, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), concerning Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). This rulemaking action complies with 40 CFR Part 51, concerning Requirements for Preparation, Adoption, and Submittal of Implementation Plans, and Title 40 generally. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicits comment on the consistency of the proposed rulemaking with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on March 6, 2007, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building B, Room 201A. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact

Lola Brown, Office of Legal Services, at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lola Brown, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. All comments should reference Rule Project Number 2006-046-114-EN. The comment period closes March 12, 2007. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Marivel Rodriguez, Air Quality Division, (512) 239-2474.

STATUTORY AUTHORITY

The rule will be proposed under TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.105, concerning General Policy; and under THSC, TCAA, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which provides for general powers and duties under the TCAA; §382.012, which authorizes the commission to develop a general, comprehensive plan for the proper control of the state's air; §382.208, which authorizes the commission to work with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of NAAQS. The rule will also be proposed under the statutory requirement for transportation conformity found in §176(c) of the 1990 FCAA Amendments. In addition, 40 CFR Part 51, Subpart T and Part 93, Subpart A established criteria and procedures for determining whether transportation plans, programs, and projects in nonattainment and maintenance areas conform with the SIP.

The proposed revisions implement Texas Water Code, §5.103 and §5.103, and Texas Health and Safety Code, §§382.011, 382.012, and 382.208.

§114.260. Transportation Conformity.

(a) Purpose. The purpose of this section is to implement certain [~~the~~] requirements set forth in 40 Code of Federal Regulations (CFR) Part 93, Subpart A (relating to Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 United States Code (USC) or the Federal Transit Laws), which are the regulations developed by the United States Environmental Protection Agency (EPA) under the Federal Clean Air Act Amendments of 1990, §176(c). This section addresses the consultation process and the written commitment requirements for control measures and mitigation measures that are used [~~It includes policy, criteria, and procedures~~] to help demonstrate and assure conformity of transportation planning activities with the state implementation plan (SIP).

(b) Applicability. This section applies to transportation-related criteria pollutants for which an area is designated nonattainment or is subject to a maintenance plan. The transportation-related criteria pollutants are [~~include~~] ozone, carbon monoxide, nitrogen dioxide, particles with an aerodynamic diameter of ten micrometers (PM_{10}) and smaller, and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$). [~~,~~] This section also applies to [~~and~~] the precursors of ozone, nitrogen dioxide, [~~and~~] PM_{10}, and $PM_{2.5}$ as required in 40 CFR §93.102. [~~(For the official list and boundaries of nonattainment areas, see 40 CFR Part 81 and pertinent *Federal Register* notices.)~~]

(c) CFR incorporation. The written commitment requirements [~~transportation conformity rules,~~] as specified in 40 CFR §93.122(a)(4)(ii) and §93.125(c) [~~Part 93, Subpart A, (62 FR 43780) dated August 15, 1997 and amended through July 1, 2004,~~] are adopted by reference [~~with the exception of §93.105. The requirements of §93.105 are addressed in subsection (d) of this section~~].

(d) Consultation. Under 40 CFR §93.105, regarding consultation, the following procedures must be undertaken in nonattainment and maintenance areas before making conformity determinations and before adopting applicable SIP revisions.

(1) (No change.)

(2) Roles and responsibilities of affected agencies.

(A) The MPO, in cooperation with TxDOT and publicly owned transit services, shall consult with the agencies in paragraph (1)(A) of this subsection in the development of Metropolitan Transportation Plans (MTPs), Transportation Improvement Programs (TIPs), projects, technical analyses, travel demand or other modeling, and data collection. Specifically, the MPOs shall:

(i) allow the commission's executive director [~~Air Quality Planning and Implementation Division director,~~] or a designated representative, to be a voting member of technical committees on surface transportation and air quality in each nonattainment and maintenance area in order to consult directly with the particular committee during the development of the transportation plans, programs, and projects;

(ii) send information on time and location, an agenda, and supporting materials (including preliminary versions of MTPs and TIPs) for all regularly scheduled meetings on surface transportation or air quality to each of the contacts specified in paragraph (1)(B) of this subsection. This information must be provided in accordance with the locally adopted public participation [~~involvement~~] process as required in [~~by~~] 23 CFR Part 450 [~~§450.316(b)(1)~~];

(iii) after preparation of final draft versions of MTPs and TIPs, and before adoption and approval by the affected governing body, ensure that the contacts specified in paragraph (1)(B) of this subsection receive a copy, and that they are included in the local area's public participation process as required in [~~by the Metropolitan Planning Rule,~~] 23 CFR Part 450[~~§450.316(b)(1)~~]. Upon approval of MTPs and TIPs, MPOs shall distribute final approved copies of the documents to the contacts specified in paragraph (1)(B) of this subsection;

(iv) (No change.)

(v) include in the TIP a list of projects exempted from the requirements of a conformity determination under 40 CFR §93.126 and §93.127. The MPO shall consult with the affected agencies specified in paragraph (1)(A) of this subsection in determining if a project on the list has potentially adverse emissions for any reason, including whether or not the exempt project will interfere with implementation of an adopted transportation control measure (TCM). The MPO shall respond in writing to all comments within 30 days on final MTP and TIP documents. In addition, if no comments are received as part of the subsequent public participation [~~involvement~~] process for the TIP, the MPO may proceed with implementation of the exempt project;

(vi) (No change.)

[~~(vii)~~ ~~as required by 40 CFR §93.116 and §93.123, and in cooperation with TxDOT, make a preliminary identification of~~

those projects located at sites in PM_{10} nonattainment and maintenance areas that require quantitative PM_{10} hot spot analyses. After these projects have been identified, the MPO shall submit a list of these projects and sufficient data to the agencies specified in paragraph (1)(A) of this subsection for review and comment;]

(vii) [(viii)] before adoption of any new or substantially different methods or assumptions used in the hot spot or regional emissions analysis, provide an opportunity for the agencies specified in paragraph (1)(A) of this subsection to review and comment;

(viii) [(ix)] in coordination with TxDOT and the local transit agencies, disclose all known, regionally significant, non-federal projects, even if the sponsor has not made a final decision on its implementation; include all disclosed, or otherwise known, regionally significant, non-federal projects in the regional emissions analysis for the nonattainment area; respond in writing to any comments that known plans for a regionally significant, non-federal project have not been properly reflected in the regional emissions analysis; and have recipients of federal funds determine annually that their regionally significant, non-federal projects are included in a conforming MTP or TIP, or are included in a regional emissions analysis of the MTP and TIP. The MPO shall consult with project sponsors to determine the non-federal projects' location and design concept and scope to be used in the regional emissions analysis, particularly for projects that the sponsor does not report a single intent because the sponsor's alternatives selection process is not yet complete. If the MPO assumes a design concept and scope that is different from the sponsor's ultimate choice, the next regional emissions analysis for a conformity determination must reflect the most recent information regarding the project's design concept and scope;

(ix) [(x)] ensure timely TCM implementation and report on the implementation and emissions reductions status of adopted TCMs annually to the commission;

(x) [(xi)] cooperatively share the responsibility for conducting conformity determinations on transportation activities that cross the borders of MPOs or nonattainment and maintenance areas. The affected MPOs will enter into a Memorandum of Agreement (MOA) that will define the effective boundary and the respective responsibilities of each MPO for regional emissions analysis. The MPOs will be responsible within their respective metropolitan area boundaries and, at their option, beyond to the boundaries of the nonattainment/maintenance areas, for regional emissions analysis. Adjacent MPOs or nonattainment/maintenance areas or basins will share information concerning air quality modeling assumptions and emission rates that affect both areas; and

(xi) [(xii)] for the purpose of determining the conformity of all projects outside the metropolitan planning area, but within the nonattainment or maintenance area, enter into an MOA involving the MPO and TxDOT for cooperative planning and analysis of projects.

(B) The commission, as the lead air quality planning agency, shall work in consultation with the agencies specified in paragraph (1)(A) of this subsection in developing applicable transportation-related SIP revisions, air quality modeling, general emissions analysis, emissions inventory, and all related activities. Specifically, the commission shall:

(i) - (iv) (No change.)

(v) consult with the applicable agencies specified in paragraph (1)(A) of this subsection, in order to cooperatively choose conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR §93.109(l)(2)(iii) [§93.109(g)(2)(iii)].

(C) (No change.)

(3) General procedures.

(A) The MPO, TxDOT, or the commission, as applicable, shall respond to comments of affected agencies on MTPs, TIPs, projects, or SIP revisions in accordance with the public participation [involvement] procedures that govern the involved action. The MPO, TxDOT, or the commission, as applicable, shall include all comments and the replies to those comments with final documents when they are submitted for adoption by the agency's governing board. In the event that comments are not adequately resolved, the procedures outlined in paragraph (4) of this subsection regarding conflict resolution apply.

(B) (No change.)

(C) For the purposes of evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot spot and regional emissions analyses, agencies specified in paragraph (1)(A) of this subsection shall participate in a working group [identified as the Technical Working Group for Mobile Source Emissions]. The frequency of meetings and agendas for them will be cooperatively determined by the agencies specified in paragraph (1)(A) of this subsection. [The function of this working group may be delegated to an existing group with similar composition and purpose.]

(D) - (E) (No change.)

(4) (No change.)

(5) Public comment on conformity determinations. Consistent with the requirements of 23 CFR Part 450, concerning public participation [involvement], the agencies making conformity determinations on transportation plans, programs, and projects must establish a proactive public participation [involvement] process that provides opportunity for public review and comment. [This process must, at a minimum, provide reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and before taking formal action on conformity determinations for all MTPs and TIPs, as required by 23 CFR §450.316(b) and this section.] Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR §7.43 [§7.95]. In addition, these agencies shall address in writing any public comment claiming that a non-FHWA/FTA funded, regionally significant project has not been properly represented in the conformity determination for an MTP or TIP. Finally, these agencies shall provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

(6) (No change.)

(e) Regionally significant, non-federal projects. For the purposes of 40 CFR §93.121, adoption or approval of a regionally significant, non-federal project (a regionally significant project that does not require FHWA or FTA approval or funding) occurs when affected agencies that are recipients of federal funds designated under 23 USC or the federal transit laws take one of the following actions:

(1) board approval, action, or resolution (such approval, action, or resolution does not include MPO approval for the purposes of approving a project in a currently conforming MTP or TIP);

(2) issuance of administrative permits for the regionally significant project;

(3) action of official authorizing the regionally significant project to proceed;

(4) providing grants or loans for the construction of a regionally significant project; or

(5) contract execution for the regionally significant project.

(f) [~~(e)~~] Compliance date. Compliance with this section is required for transportation conformity determinations that begin the interagency consultation process after [~~begins on~~] the date of EPA approval of the transportation conformity SIP associated with this rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2007.

TRD-200700212
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 239-0348

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY

SUBCHAPTER C. STANDARDS

37 TAC §35.36

The Texas Department of Public Safety proposes to amend §35.36, concerning Consumer Information and Vehicle Signage. Amendment of the section is necessary in order to clarify the rule by limiting the scope of the license number signage requirement to those vehicles on which the company name is displayed.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local governments.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the anticipated public benefit resulting from adoption of the section will be the clarification of this rule and the resulting display of license numbers on company vehicles will benefit the public by providing greater assurance of licensure and by facilitating the filing of complaints. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposal are requested and may be sent to Steve Moninger, RLS Legal Staff, Department of Public Safety-Private Security Bureau, P.O. Box 4087, MSC-0246, Austin, Texas 78773-0246, (512) 424-5842, (fax: (512) 424-7725).

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) are affected by this proposal.

§35.36. Consumer Information and Vehicle Signage.

(a) A licensee shall, either orally or in writing, notify all consumers or recipients of services of the license number and the name, mailing address, and telephone number of the Private Security Bureau for the purpose of directing complaints.

(b) If a licensee chooses to provide the notice required by subsection (a) of this section in written form, the notification shall contain their license number, the name, mailing address and telephone number of the Bureau, in a type-face of the same size as that which appears in the document as a whole, but in no case less than 10 point size.

(c) A licensed company must display conspicuously in the principal place of business and any branch office, a sign containing the name, mailing address, and telephone number of the bureau, and a statement informing consumers or recipients of services that complaints against licensees can be directed to the bureau.

(d) The company license number must be displayed on any vehicle on which the company name is displayed, and must be in letters and numbers at least one inch high and permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color.

[~~(e) Vehicles operated by private investigators or personal protection officers are exempt and vehicles operated for administrative purposes are exempt.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2007.

TRD-200700225
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER M. COMPANY RECORDS

37 TAC §35.204

The Texas Department of Public Safety proposes to amend §35.204, concerning Pre-Employment Check. Amendment reformats the section in order to add new subsections (b) and (c). The new subsections are necessary in order to clarify the scope of the rule's requirement that an employer perform a pre-employment check on all applicants for non-commissioned security guard positions, and to require that employers keep records of this check.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local governments.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the anticipated public benefit resulting from adoption of the section will be more efficient and effective enforcement of the Private Security Act's requirement of pre-employment background checks of non-commissioned security guards. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposal are requested and may be sent to Steve Moninger, RLS Legal Staff, Department of Public Safety-Private Security Bureau, P.O. Box 4087, MSC-0246, Austin, Texas 78773-0246, (512) 424-5842, (fax: (512) 424-7725).

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) are affected by this proposal.

§35.204. Pre-Employment Check.

(a) The employer of a [~~commissioned security officer or~~] registrant shall exercise due diligence in ensuring that an applicant's qualifications meet the provisions of §1702.113 of the Act, prior to duty assignment.

(b) The employer of an applicant for a security guard commission who wishes to allow the applicant to work as an unarmed guard while the application is pending shall exercise due diligence in ensuring that the applicant's qualifications meet the provisions of §1702.113 of the Act, prior to assigning the applicant to unarmed duty.

(c) The employer must maintain records to document the pre-employment check. The failure to maintain such records will constitute prima facie proof of the failure to exercise the due diligence required by this rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER S. CONTINUING EDUCATION

37 TAC §35.291

The Texas Department of Public Safety proposes to amend §35.291, concerning Mandatory Continuing Education Courses. Amendment of the section is necessary in order to enhance the current continuing education requirements for the private security industry.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local governments.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the anticipated public benefit resulting from adoption of the section will be more effective training on the part of regulated service providers. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Written comments on the proposal are requested and may be sent to Steve Moninger, RLS Legal Staff, Department of Public Safety-Private Security Bureau, P.O. Box 4087, MSC-0246, Austin, Texas 78773-0246, (512) 424-5842, (fax: (512) 424-7725).

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) are affected by this proposal.

§35.291. Mandatory Continuing Education Courses.

(a) A license may not be renewed until the required minimum hours of board approved continuing education credits have been obtained in accordance with the Act and board rules. Proof of the required continuing education must be maintained by the employer and contained in the personnel file of the registrant's employing company.

(1) All registrants not specifically addressed in this section shall complete a total of eight (8) hours of continuing education, seven hours of which must be in subject matter that relates to the type of registration held, and one (1) hour of which must cover ethics. Following the initial registration period, Qualified Managers of Class B licensed companies may take a one (1) hour course devoted to changes in laws and rules applicable to the security industry, as a substitute for the above ethics requirement.

(2) Non-participating owners, partners, shareholders, non-commissioned security officers and administrative support personnel are specifically exempted from the continuing education requirements.

(3) Private investigators and managers of Class A and Class C licenses with more than fifteen (15) years of continued registration as a private investigator or manager of a Class A or Class C license shall complete a total of twelve (12) hours of continuing education, eight (8) hours of which must be in subject matter that relates to the type of registration held, two (2) hours of which must be over ethics, and two (2) hours of which must involve the review of Texas Occupations Code, Chapter 1702, and the Board's Administrative Rules, Tex. Admin. Code, 37 TAC 35. Private Investigators and managers of Class A and Class C licenses with less than fifteen (15) years of continued registration as a private investigator or manager

of a Class A or Class C license shall complete a total of eighteen (18) hours of continuing education, fourteen (14) of which must be in subject matter that relates to the type of registration held, two (2) hours of which must be over ethics, and two (2) hours of which must involve the review of Texas Occupations Code, Chapter 1702 and the Board's Administrative Rules, Tex. Admin. Code, 37 TAC 35.

(4) Any person registered as a private investigator who fails to complete the required continuing education during the twenty-four (24) months of an initial registration is not eligible to make new or renewal application until such time as the training requirement for the previous registration period has been satisfied.

(5) Commissioned security officers and personal protection officers shall complete six (6) hours of continuing education. Continuing education for commissioned security officers and personal protection officers must be taught by schools and instructors approved by the board to instruct commissioned security officers as defined in §1702.1685 of the Act. Commissioned security officers shall submit a firearms proficiency certificate along with their renewal application.

(6) All registrants shall indicate they have completed the required minimum hours of board-approved continuing education credits on their application for renewal. A renewal application shall also include name of school, school number, seminar number, seminar date, and credits earned.

[~~(7) Continuing education schools shall report attendees of continuing education classes to board within thirty (30) days of class completion. This report shall include the school number, instructor number, date and location of school. In addition to the following information for each participant: name, SSN and continuing education credit earned.~~]

(7) [~~(8)~~] During the first (1st) twelve (12) [~~twenty-four (24)~~] months of initial registration each person employed as an alarm system installer or alarm systems salesperson must complete sixteen (16) hours of classroom instruction, as described in Chapter 1702, Texas Occupation Code, with two (2) hours covering the National Electrical Code (NEC) as it applies to low voltage. Any person employed as an alarm systems installer or alarm systems salesperson must obtain eight (8) hours of continuing education credits in alarm related field, with one (1) hour covering the National Electrical Code (NEC) as it applies to low voltage, during each subsequent twenty-four (24) month period preceding the expiration date of registration in order to renew the registration.

(8) For the protection of the installer and the general public, the work of an alarm system installer who has not completed the required sixteen (16) hours of instruction must be overseen by an installer who has completed the required sixteen (16) hours of instruction. The oversight required under this section need not involve direct, physical supervision, but the overseeing installer is responsible for ensuring that the installation complies with all applicable requirements and regulations.

(9) Any person licensed as an alarm systems installer or alarm systems salesperson who fails to complete 16 hours of training during the 24 months of initial licensure or who fails to complete 8 hours of continuing education during any subsequent licensing period is not eligible to make new or renewal application until such time as all training requirements for the previous license period have been satisfied.

(10) Alarm monitors shall complete four (4) hours of continuing education in subject matter that relates to the duties and responsibilities of an alarm monitor.

(11) The manager or his designee shall approve classes for continuing education that are determined to meet the qualifications of the Act and board rules.

(12) Any person licensed by the board as an alarm instructor shall be authorized to instruct all alarm continuing education courses approved by the board.

(13) Any person licensed by the board as a Level III or Level IV Instructor shall be authorized to instruct all continuing education courses approved by the board excluding alarm continuing education.

[~~(b) Continuing education instructors shall provide a certificate of completion to each person successfully completing the continuing education course within 7 days after the date of course completion.~~]

[~~(1) The continuing education certificate of completion shall contain:~~]

[~~(A) the name and social security number of the person attending the course;~~]

[~~(B) the title and topic of the course;~~]

[~~(C) the number of hours of instruction provided;~~]

[~~(D) the signature of the instructor; and~~]

[~~(E) any information deemed necessary by the manager.~~]

[~~(2) The manager of a commissioned security officer training school conducting a continuing education course for commissioned security officers shall provide a certificate of completion to each person successfully completing the course within 7 days after the date the course was completed.~~]

[~~(3) The certificate of completion for commissioned security officers shall contain:~~]

[~~(A) the name and social security number of the person attending the course;~~]

[~~(B) the title and topic of the course;~~]

[~~(C) the number of hours of instruction provided;~~]

[~~(D) the signature of the instructor and school director; and~~]

[~~(E) any information deemed necessary by the manager.~~]

(b) [~~(c)~~] To receive board approval, a continuing education course shall contain instruction relating to one or more of the following:

(1) investigative procedures and practices;

(2) business practices;

(3) legal aspects of private investigation or private security;

(4) ethical aspects of private investigation or private security;

(5) handgun proficiency as defined under §1702.168 of the Act; and/or

(6) any other course of instruction approved by the manager.

(c) [~~(d)~~] To receive board approval, a continuing education course shall contain at least one (1) clock hour of instruction.

(d) [~~(e)~~] The manager shall approve courses for continuing education that are determined to meet the qualifications of these rules and the Act.

[~~(1) Courses may be provided for and taught by any organization or person that, in the manager's discretion, has the education, knowledge and experience to provide such information.~~]

[~~(2) A person wishing to conduct a continuing education course must provide the manager a description of the contents of the curriculum and the qualifications of any instructor.~~]

[~~(3) The manager shall inform the person wishing to conduct the course of the approval or disapproval within 10 working days of receiving the request.~~]

[~~(4) The manager may delegate this responsibility to other employees of the board.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2007.

TRD-200700227
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 424-2135

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37 TAC §35.292

The Texas Department of Public Safety proposes new §35.292, concerning Requirements for Continuing Education Courses. New §35.292 is necessary in order to specify the curriculum, instructor qualifications, and record keeping requirements for continuing education courses.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be more effective regulation of the continuing education courses provided to the private security industry. There is no adverse economic impact anticipated for small businesses, or micro-businesses. The anticipated cost to individuals will be the $300 annual licensing fee for school directors and the $100 annual licensing fee for instructors.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Steve Moninger, RLS Legal Staff, Department of Public Safety-Private Security Bureau, P.O. Box 4087, MSC 0246, Austin, Texas 78773-0246, (512) 424-5842 (fax: (512) 424-7725).

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter; and Texas Occupations Code, §1702.062, which authorizes the department to establish reasonable and necessary fees to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) and §1702.062 are affected by this proposal.

§35.292. Requirements for Continuing Education Courses.

(a) All recognized continuing education schools shall be licensed by the Bureau.

(b) All continuing education schools shall comply with the following:

(1) Schools shall have a physical address within the state of Texas. A U.S. post office box or private postal service box will not be considered a physical address.

(2) Schools shall have a school director who lives and maintains an office in the state of Texas.

(3) The school director shall maintain attendance records within the state of Texas.

(4) School attendance records shall include the following:

(A) subjects taught in each course of instruction;

(B) total hours of each course of instruction and the hours instructed on each subject;

(C) date of instruction;

(D) name, license number, and date(s) of attendance for each individual that attended a course of instruction.

(5) Schools shall issue a certificate of attendance to each individual attending a course of instruction. The certificate of attendance shall contain the name and license number of the attendee, the date of attendance, the number of hours of attendance, and the course(s) of instruction attended.

(6) Schools shall teach all continuing education courses in the state of Texas, unless the course has a Texas-licensed continuing education school sponsor approved by the Bureau. A Texas school must make a written request to sponsor an out of state course of instruction to the Bureau at least sixty (60) days prior to the course presentation. The Texas school shall maintain records of instructors, courses taught, number of hours presented, and any Texas licensed or registered attendees of the sponsored school for a period of five (5) years.

(c) School directors of licensed continuing education schools shall comply with the following:

(1) The school director shall maintain all records of attendance within the state of Texas.

(2) The school director shall provide each attendee with a certificate of attendance/completion upon completion of any course. Each certificate shall be signed and dated by the school director.

(3) The school director shall verify that each continuing education course offered is in compliance with all administrative rules related to continuing education courses.

(4) The school director shall verify the qualifications of each instructor and adjunct or assistant instructor. Verification records shall be retained for five (5) years.

(5) The school director shall provide copies of all school records to the bureau upon request.

(6) The school director shall pay an annual licensing fee of $300.00.

(d) Instructors of licensed continuing education schools shall comply with the following:

(1) The instructor shall pay an annual licensing fee of $100.00.

(2) The instructor shall provide proof of qualifications/expertise and a course outline for each course of instruction to the school director sponsoring the course taught by the instructor.

(3) Instructors may use adjunct or assistant instructor to assist in presenting courses of instruction. The instructor shall provide proof of the qualifications of any adjunct or assistant instructor to the school director sponsoring the course. The instructor must be in attendance with the adjunct or assistant instructor during the presentation.

(e) Attendees of courses of continuing education shall maintain certificates of completion furnished by the school director in their files for a period of three (3) years. Attendees shall furnish the Bureau with copies of all certificates of completion upon request.

(f) The Bureau may recognize courses of instruction received through any state-recognized university, college, or community college upon proof of attendance and completion of the course with a passing grade.

(g) Companies licensed by the Bureau with ten (10) or more registered employees may make a written request for a letter of exemption allowing them to provide continuing education to those employees registered under the requesting company's license. Such requests shall be addressed to the Bureau Manager. A letter of exemption granted under this section shall be valid for two (2) years. To qualify for a letter of exemption, the company must appoint a training director, assure that all training is in compliance with all related administrative rules, maintain proof of all training, and provide each employee with a certificate of training as required by this section. There is no annual fee associated with a letter of exemption issued under this subsection.

(h) The Bureau shall inspect the continuing education records of 10% of licensees and registrants annually to assure compliance with these requirements and to maintain the integrity of the continuing education program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2007.

TRD-200700224
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 424-2135

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PART 3. TEXAS YOUTH COMMISSION

CHAPTER 81. INTERACTION WITH THE PUBLIC

37 TAC §81.36

The Texas Youth Commission (the commission) proposes an amendment to §81.36, concerning interaction with the public. The amendment to the section will expand the notification requirements regarding offense-related information concerning youth in the jurisdiction of the commission to officials of the school in which the youth is enrolled.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Don Brantley, Ph.D., Assistant Deputy Executive Director for Juvenile Corrections, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be compliance with current law regarding offense-related notices to schools officials when a youth in the jurisdiction of the commission enrolls in school. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Code of Criminal Procedures, §15.27, which provides the commission with the authority to permit oral and written notices regarding offense-related information to school officials when a youth in the jurisdiction of the commission enrolls in school.

The proposed rule affects the Human Resources Code, §61.034.

§81.36. Notification to Public and Private Schools.

(a) Purpose. The purpose of this rule is to provide a procedure for Texas Youth Commission (TYC) staff to notify public and/or private school officials regarding offense-related information concerning TYC youth in a community or on parole. [~~when certain action is taken against a TYC paroled youth.~~]

(b) Explanation of Term Used. School Officials--For public schools it is the superintendent and the principal of the school/district the youth is enrolled. For private schools it will be the administrator of the school in which the youth is enrolled.

(c) Notification Requirements. For youth in a non-secure placement or on TYC parole, TYC staff shall provide the following information, in oral and written form, to school officials in which the youth is enrolled:

(1) the offense(s), including dates of action, resulting in commitment to and classification within TYC;

(2) whether or not the youth is a registered sex offender;

(3) any court adjudication/conviction subsequent to commitment to TYC, including the date of the action and the offense/allegation; and

(4) any arrest/detention/referral to court that is still pending final disposition.

[~~(b) The assigned TYC parole officer of a youth who transfers from a school or is subsequently removed from a school and later returned to a school or to a different school district shall notify the new school officials of:~~]

[(1) an arrest/detention/referral to juvenile court, the date of the action, and the offense/allegation; or]

[(2) an adjudication/conviction, date of the action, and the offense for which the action was taken.]

[(c) The oral and written notice must include sufficient detail so that the official can determine whether there is reasonable belief that the youth has engaged in conduct defined as a felony.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 22, 2007.

TRD-200700156
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 424-6301

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 605. STANDARDIZED FORM

40 TAC §605.1

The State Pension Review Board (hereafter referred to as the Board) hereby proposes the following amendment to rule §605.1, which adopts by reference the standard form identified below to assist in efficiently determining the actuarial soundness and current financial condition of public retirement systems, to implement a quarterly reporting system analyzing quarterly data, and to assist in the conduct of the Board's business.

Background and Justification

This rule amendment is proposed, in part, to comply with Texas Government Code, §801.201(c)(1), which requires the Board to adopt standardized forms to assist the Board in determining the actuarial soundness and current financial condition of public retirement systems. It is also amended to comply with the Acts of 2005, General Appropriations Act, Art. I, State Pension Review Board, Rider 2, 79th Reg. Session, which directs the Board to develop an early warning system that will analyze the information requested by the form being added by this rule amendment to the list of Board-developed forms.

Fiscal Note

Mr. Ben Armendariz, Accountant for the Board, has determined that, for the first five years the rule is in effect, there will be no fiscal impact to the state or local governments as a result of administering and enforcing the proposed rule amendment.

Small and Micro-business Impact Analysis

Mr. Armendariz has also determined there will be no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed

Public Benefit

Ms. Virginia Smith, Executive Director of the State Pension Review Board, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be standardization and efficiency of reporting functions of public retirement systems as well as early detection of problems or issues related to the systems that may need to be addressed.

Public Comments

Written comments on the proposal may be submitted to Ms. Lynda Baker, State Pension Review, Texas Register Liaison, via mail to P.O. Box 13498, Austin, Texas 78711, or electronically to *prb@prb.state.tx.us* no later than 5:00 p.m. CST within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The rule amendment is proposed pursuant to the authority provided under Texas Government Code, §801.201(a) and (c) which provide as follows: §801.201(a) requires the Board to adopt rules for the conduct of its business; and §801.201(c)(1) requires the Board, by rule, to adopt a brief standard form that will assist the Board in efficiently determining the actuarial soundness and current financial condition of a public retirement system.

No other code, article, or statute is affected by the proposed amendment.

§605.1. Adoption of Standard Forms.

(a) The Board hereby proposes by reference the standard forms identified below under subsection (b) of this section to assist in efficiently determining the actuarial soundness and current financial condition of public retirement systems, to implement a quarterly reporting system addressing factors included in these forms, under subsection (b)(5) of this section and to assist in the conduct of the Board's business.

(b) The standard forms hereby adopted by the Board are the following:

(1) - (4) (No change.)

(5) Quarterly Plan Report - Form Series: PRB-500

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2007.

TRD-200700206
Lynda Baker
Executive Assistant
State Pension Review Board
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 463-1736

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40 TAC §605.3

The State Pension Review Board (hereafter referred to as the Board) hereby proposes an amendment to §605.3, regarding

submission of forms, requiring public pension systems to submit quarterly information to the Board. The form will assist the Board in implementing an quarterly reporting system and in efficiently determining the actuarial soundness and current financial condition of public retirement systems on a more frequent and current basis than has been previously required. As directed by the 79th Legislature the State Pension Review Board will develop an early warning system that will analyze for all actuarially funded public pension plans, the following:

(1) the market value of assets at the beginning and end of the quarter;

(2) the payments of benefits from the fund during the quarter;

(3) the contributions to the fund during the quarter;

(4) the number of new retirees during the quarter;

(5) the number of active members at the end of the quarter; and

(6) any benefit changes to the fund implemented or considered during the quarter.

Background and Justification

This rule is proposed to comply with Texas Government Code, §801.201(c)(2) which requires the Board to require public retirement systems to complete and submit the standard forms, §801.202(1) and (2), requiring the Board to conduct continuing review and intensive studies of public retirement systems, and Acts of 2005, General Appropriations Act, Article I, Rider 2, requiring the Board to develop an early warning system that addresses the factors regarding the actuarial and financial soundness of pension systems on a quarterly basis.

Fiscal Note

Ben Armendariz, Accountant for the Board, has determined that for the first five years the amendment is in effect, there will be no fiscal impact to the state or local governments as a result of administering and enforcing the amended rule.

Small and Micro-business Impact Analysis

Mr. Armendariz has also determined that for each year of the first five years the amendment is in effect there will be no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Public Benefit

Virginia Smith, Executive Director of the State Pension Review Board, has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be standardization and efficiency of reporting functions of public retirement systems as well as early detection of problems or issues related to the systems that may need to be addressed.

Public Comments

Written comments on the proposal may be submitted to Lynda Baker, Texas Register Liaison, State Pension Review, via mail to P.O. Box 13498, Austin, Texas 78711, or electronically to *prb@prb.state.tx.us* no later than 5:00 p.m. CST within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed pursuant to the authority provided under Texas Government Code §801.201(a) and (c), which provide as follows: §801.201(a) requires the Board to adopt rules for the conduct of its business; and §801.201(c)(2) requires the Board, by rule, to require a retirement system to include the standard forms with information required for the Board to conduct a review or study described in Texas Government Code §801.202(1) or (2).

No other code, article, or statute is affected by this proposed amendment.

§605.3. Submission of Forms.

(a) A public retirement systems must complete and submit to the Board the standard forms identified as Form numbers PRB-100, PRB-200, PRB-300, [~~and~~] PRB-400, and PRB-500 in §605.1 regarding adoption of standard forms.

(b) (No change.)

(c) A public retirement system must complete and submit to the Board Form PRB 500 no later than the 45th date after each quarter ending March, June, September and December.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2007.

TRD-200700207
Lynda Baker
Executive Assistant
State Pension Review Board
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 463-1736

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.104 - 700.106 and the repeal of §§700.107 - 700.114 and §700.413, concerning the DFPS records retention schedule, in its Child Protective Services chapter. DFPS, like all state agencies, is required by Chapter 441 of the Texas Government Code to submit an agency-wide retention schedule for approval by the Texas Library and Archives Commission. DFPS's approved schedule lists record retention periods for all types of records held by DFPS, and is available on the DFPS website. The primary purpose of the proposed amendments and repeals is to delete information that is duplicative of the official DFPS records retention schedule. In §700.104, the agency name and computer system references are updated, and subsections (c) and (d) are deleted because they contain information that is found in Subchapter B of this chapter (relating to Confidentiality and Release of Records). In §700.105, the agency name is updated. In §700.106 the agency name and computer system references are updated; and subsection (c) is replaced to accurately reflect that other

entities are responsible for the retention and destruction of their own videotapes. Sections 700.107 - 700.114 and §700.413 are repealed because they duplicate the official records retention schedule, which is available on the DFPS website.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments and repeals will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Ms. Brown also has determined that for each year of the first five years the proposed amendments and repeals are in effect the public benefit anticipated as a result of enforcing the proposal will be improved access to the most comprehensive, current schedule for all agency records. There will be no effect on large, small, or micro-businesses because the proposed changes and repeals do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendments or repeals.

Questions about the content of the proposal may be directed to Rex Evans at (512) 438-5646 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-359, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

SUBCHAPTER A. ADMINISTRATION

40 TAC §§700.104 - 700.106

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Chapter 441 of the Texas Government Code.

§700.104. Child Abuse and Neglect Central Registry.

(a) General description. As required in the Texas Family Code (TFC), §261.002, the [~~Texas~~] Department of Family and Protective [~~and Regulatory~~] Services (DFPS) [~~(TDPRS)~~] maintains a central registry of reported cases of child abuse and neglect. The registry is maintained as a subset of information in the DFPS [~~TDPRS~~] automated system, Information Management Protecting Adults and Children in Texas (IMPACT) [~~Child and Adult Protective Services System (CAPS)~~]. While IMPACT [~~CAPS~~] is used for recording and storing all casework related activities for both child and adult protective services, the child protective services central registry consists only of information gathered during investigations of child abuse and neglect in cases which were given a disposition of "reason to believe" and the person had a role of designated perpetrator or sustained perpetrator.

(b) (No change.)

[~~(c) Release of information. When an individual has submitted a notarized written request, approved by TDPRS, for central registry information about himself, TDPRS has the authority to release the results of the central registry check to the requestor.~~]

[~~(d) Content of release. TDPRS has the authority to release a confirmation of the fact that the person, as qualified in subsection (c) of this section, is listed as a designated or sustained perpetrator of child abuse or neglect.~~]

§700.105. Criminal Record Checks for Authorized External Volunteer Organizations.

(a) To obtain criminal history records on volunteers or volunteer applicants, the agencies authorized by law to obtain these through the [~~Texas~~] Department of Family and Protective [~~and Regulatory~~] Services (DFPS) [~~(TDPRS)~~] must give DFPS [~~TDPRS~~] identifying information about the applicant on a form designated by DFPS [~~TDPRS~~] for that purpose.

(b) The volunteer agency must ensure that the person on whom the information is being requested has consented in writing to DFPS [~~TDPRS~~] disclosing the information to the volunteer agency.

(c) DFPS [~~TDPRS~~] discloses the criminal history information received from the Texas Department of Public Safety directly to the volunteer agency that requests it, although DFPS [~~TDPRS~~] must not give the volunteer agency a copy of the information or allow the volunteer agency to make a photocopy of the information.

(d) DFPS [~~TDPRS~~] retains the criminal records check information obtained on behalf of the volunteer agency only as long as is needed to ensure that the volunteer agency has received the information and then DFPS [~~TDPRS~~] deletes or destroys the information.

(e) DFPS [~~TDPRS~~] may charge an organization that requests criminal record history information a fee in the amount necessary to cover the costs of obtaining the information on the organization's behalf.

§700.106. Retention and Destruction [~~Disposal~~] of Case Information.

(a) The [~~Texas~~] Department of Family and Protective [~~and Regulatory~~] Services (DFPS) [~~(TDPRS)~~] retains Child Protective Services case information after case closure in order to document services provided to clients, and to meet state and federal accountability requirements. A complete listing of the types of records maintained by DFPS may be found in the DFPS Records Retention Schedule, available on the DFPS public website.

(b) When the retention period has elapsed, DFPS [~~TDPRS~~] permanently removes the case information from the Information Management Protecting Adults and Children in Texas (IMPACT) [~~Child and Adult Protective Services System (CAPS)~~] database and destroys the paper case record in a manner that protects [~~does not jeopardize~~] confidentiality.

(c) Texas Family Code, §264.408(d) describes who owns a videotape of a child made at a child advocacy center. If the owner of the videotape is an entity other than DFPS (e.g. criminal prosecuting attorney, or county or district attorney representing DFPS), then the other owner is responsible for the retention and destruction of the videotapes. [~~Case information to be destroyed does not include that given to the criminal justice system for its use in investigation and prosecution, such as a videotape of a child's statement. Such information~~

~~given to the criminal justice system is subject to destruction according to that system's guidelines.~~]

(d) Information in IMPACT [~~CAPS~~] on persons who are referenced in DFPS cases [~~principals or collaterals~~] is retained until the last case in which the person is referenced is purged or destroyed in accordance with the DFPS Records Retention Schedule [~~a member is removed from CAPS and then all the information on the person is also removed~~].

(e) The IMPACT [~~CAPS~~] system classifies cases for retention and destruction purposes according to the criteria in this section at the time the cases are closed. If a closed case on a family is re-opened for subsequent action by DFPS [~~TDPRS~~], such as another intake, investigation, services, or a casework-related special request, staff merge the open and closed cases into one. Staff may also merge cases while both are closed or open. When the merged case is closed it is reclassified and retained for the length of the reclassified retention period. Reclassification is based on the contents of the entire merged case or related cases and the case(s) is given the retention classification highest in the hierarchy.

(f) DFPS [~~TDPRS~~] may extend the retention period for a case for [~~any of~~] the following purposes:

(1) If an activity such as a fiscal or program audit, release notice or hearing, as specified in §700.601 of this title (relating to Definitions), fair hearing, lawsuit or appeal involving the case is in process, staff must [~~may~~] extend the retention. The case information is retained as long as required by the auditor, administrative law judge, or attorney representing DFPS [~~TDPRS~~].

(2) If a person is in more than one case, but the cases are not merged, the IMPACT [~~CAPS~~] system relates the cases to the person. When the related cases are closed, staff may extend the retention of each of the related cases when necessary to assess risk of abuse/neglect of children and when it is necessary to retain the case information online [~~on-line~~]. When it is not necessary to retain the information online [~~on-line~~], staff include the information in the paper case record.

(g) The regional director or the Assistant Commissioner of Child Protective Services [~~director of TDPRS's Office of Protective Services for Families and Children~~] or either's designee must approve the extension of the retention period for a case. The retention period may be extended as long as needed. The reason for the longer retention and the approval must be documented on the records retention window in IMPACT [~~CAPS~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2007.

TRD-200700173
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 438-3437

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40 TAC §§700.107 - 700.114

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Chapter 441 of the Texas Government Code.

§700.107. Retention of Conservatorship or Foster Care Case Information.

§700.108. Retention of Family Preservation Services Case Records.

§700.109. Retention of Case Records for Cases Closed After Investigation.

§700.110. Retention of Closed-After-Investigation/Ruled Out/Case Records.

§700.111. Closed-After-Investigation/Other Case Records.

§700.112. Case Records Not Involving Abuse/Neglect or Conservatorship.

§700.113. Retention of Case Records Related to Foster and Adoptive Homes.

§700.114. Retention of Post-Adoption Services Case Records.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2007.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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SUBCHAPTER D. SCHOOL INVESTIGATIONS

40 TAC §700.413

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that

the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Chapter 441 of the Texas Government Code.

§700.413. Retention of Investigative Reports.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2007.

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Gerry Williams
General Counsel
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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 5. FINANCE

SUBCHAPTER G. PRIVATE ACTIVITY BONDS

43 TAC §§5.81 - 5.88

The Texas Department of Transportation (department) proposes Title 43, Chapter 5, new Subchapter G, §§5.81 - 5.88, concerning private activity bonds.

EXPLANATION OF PROPOSED SECTIONS

Transportation Code, §222.035, requires the department to establish and administer a program for private activity bonds issued for highway facilities or surface freight transfer facilities in this state. The program is required to include a process by which the department and the Texas Bond Review Board receive and evaluate applications for issuance of private activity bonds for highway facilities or surface freight transfer facilities prior to submission of a request for private activity bond allocation authorization to the United States Department of Transportation (US DOT).

Section 5.81 describes the purpose of the new subchapter, which is to establish a process and procedures governing applications for the issuance of private activity bonds for highway or surface freight transfer facility projects by any eligible entity authorized to submit an application to the Texas Transportation Commission (commission). Section 5.81 provides that applications for the issuance of private activity bonds for highway or surface freight transfer facility projects of the department are exempt from the requirements of new Subchapter G, and shall be submitted to US DOT pursuant to procedures established by the department in accordance with applicable law. Section 5.81 further provides that for eligible entities authorized to submit an application for the issuance of private activity bonds to the commission, the process and procedures established under the proposed rules identify submission requirements and criteria by which the commission will receive and evaluate such applications.

Section 5.82 defines words and terms used in new Subchapter G.

Section 5.83 establishes general policies regarding the consideration of applications, limitations on the obligations of federal and state government, and access to records by governmental entities. Section 5.83 clarifies that the act of approving an application does not create a financial obligation on the part of the federal government, the State of Texas, the commission, or the department. In order to ensure compliance with applicable legal requirements relating to the use of private activity bonds for an eligible project, §5.83 provides a right of access to any books, documents, papers, or other records of an applicant approved for an allocation.

In order to assist an eligible entity in the submission of applications, §5.84 provides that the executive director of the department will designate a department contact for the purpose of providing advice and assistance to potential applicants.

Section 5.85 prescribes application procedures and information required to be submitted in an application. The submittal requirements include the information the US DOT has requested to be included in an application for an allocation submitted to US DOT. Section 5.85 also requires an application to the department to include a description of the need for the project and its anticipated benefits, such as reducing congestion and enhancing air quality. This information is required in order for the commission to approve the most worthwhile projects for purposes of applying for an allocation, as federal law caps the available allocation amount.

Section 5.86 authorizes the commission to suspend the application process if the cap on the available allocation amount is reached or uncertainties exist warranting suspension, such as uncertainties relating to the implementation of the program.

Section 5.87 provides that the department will notify the Texas Bond Review Board of all department applications to the US DOT and when applications are received from other eligible entities. Section 5.87 also prescribes the process for the joint review and assessment of applications by the Texas Bond Review Board and the department, as required by Transportation Code, §222.035. In order to develop the information and recommendations considered by the commission in determining whether to approve an application, §5.87 specifies what provisions in an application will be assessed by the department and the Texas Bond Review Board, and provides that department staff will provide a memorandum to the commission on the findings of the application review.

Section 5.88 provides that the commission may consider the advice of department staff and their consultants that the commission may choose regarding the sufficiency of the information, the probable accuracy of projections, the anticipated financial condition of the application and the project, and any other information the commission determines appropriate. Section 5.88 prescribes other information and criteria that will be considered by the commission in determining whether to approve an ap-

plication. Those criteria are intended to allow the commission to approve the most worthwhile projects for purposes of applying for an allocation, as federal law caps the available allocation amount.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Mr. Bass has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT

Mr. Bass has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the new sections will be to allow access to tax-exempt rates for bonds issued for eligible projects, thereby lowering overall project borrowing costs. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new sections may be submitted to James Bass, Chief Financial Officer, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on March 12, 2007.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §222.035, which provides the commission with the authority to establish rules to administer the private activity bond program established under that section.

CROSS REFERENCE TO STATUTE

Transportation Code, §222.035.

§5.81. Purpose.

(a) Transportation Code, §222.035, requires the Texas Department of Transportation to establish and administer a program for private activity bonds issued for highway facilities or surface freight transfer facilities in this state that includes a process by which the department and the Texas Bond Review Board receive and evaluate applications for issuance of private activity bonds for highway facilities or surface freight transfer facilities prior to submission of a request for private activity bond allocation authorization to the US Department of Transportation (US DOT). This subchapter establishes a process and procedures governing applications for the issuance of private activity bonds for highway or surface freight transfer facility projects by any eligible entity authorized to submit an application to the Texas Transportation Commission.

(b) The department is an entity eligible to submit applications to US DOT for qualified projects. Applications for the issuance of private activity bonds for highway or surface freight transfer facility projects of the department are exempt from the requirements of this subchapter, and shall be submitted to US DOT pursuant to procedures established by the department in accordance with applicable law. The department shall notify the Texas Bond Review Board of an application submitted by the department pursuant to §5.87(a)(1) of this subchapter (relating to Department Action).

(c) For other eligible entities authorized to submit an application for the issuance of private activity bonds to the commission, the process and procedures established in this subchapter identify submission requirements and criteria by which the commission will receive and evaluate such applications.

§5.82. Definitions.

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--The Texas Bond Review Board.

(2) Commission--The Texas Transportation Commission.

(3) Department--The Texas Department of Transportation.

(4) Eligible entity--An entity authorized by law to finance an eligible project by the issuance of bonds.

(5) Eligible project--A qualified highway or surface freight transfer facility.

(6) Executive director--The executive director of the department or designee not below the level of assistant executive director.

(7) Qualified highway or surface freight transfer facility--Has the meaning assigned by Section 142(m)(1) of the Internal Revenue Code (26 U.S.C. §142(m)(1)).

§5.83. General Policies.

(a) Consideration of all applications for private activity bond issuance will be in accordance with applicable federal and state law, and applicable rules and regulations.

(b) The federal government shall not be obligated by any act of the commission or department under this subchapter.

(c) Favorable consideration of any application for private activity bond issuance does not pledge the credit of the state, commission, or department.

(d) The Federal Highway Administration, the Comptroller General of the United States, the Texas State Auditor's Office, and the department, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of an applicant approved for an allocation that are pertinent to the application, in order to make audits, examinations, excerpts, and transcripts.

§5.84. Department Contact.

The executive director will designate a contact within the department for the purpose of providing information and assistance to potential applicants. Assistance may include non-binding advice, counsel, and consultation regarding all aspects of a possible application. Any advice, assistance, or aid provided will not constitute a commitment or liability on the part of the department or commission. Potential applicants are encouraged to communicate with the contact at the earliest possible date.

§5.85. Application Procedure.

An eligible entity shall submit an application to the executive director in a form prescribed by the department. An original application and five copies are to be delivered to the executive director. The application must, at a minimum, include the following information:

(1) an overview of the project, which shall include a description of the project (location and scope), the total cost of the project, and the amount and proposed use of the requested private activity bond allocation;

(2) a copy of the resolution authorizing the issuance of bonds adopted by the eligible entity;

(3) financing and development team information, including the proposed issuer of the bonds, the borrower, and any other key participants (with prior experience in projects similar to the project proposed listed);

(4) project development schedule, including timelines for major financial milestones (particularly the date for issuance of the private activity bonds) and major construction milestones (permits, environmental, right of way, etc.);

(5) estimated project cost information, including a summary of capital costs by category, table of all project costs by category, identification of costs that are eligible for private activity bond funding, and a project expenditure schedule by category type;

(6) identification of other (in addition to private activity bonds) project funding sources and a construction period sources and uses table;

(7) assumptions used for private activity bond financing (terms, rate, structure, reserves, legal provisions, etc.), as well as other funding sources;

(8) cash flow operating pro forma, with a narrative description of and assumptions on traffic and revenue (including supporting documentation) and operating and maintenance costs;

(9) the proposed pledge of collateral or security, including the priority of claim, for repayment of the private activity bonds and other funding sources;

(10) identification of any financial assistance, guarantees, or credit enhancement;

(11) draft bond counsel opinion letter;

(12) a description of the need for the project and how the project will reduce congestion, enhance economic opportunity, enhance safety, improve air quality, and increase the value of transportation assets;

(13) identification of any revisions or changes to state highway system facilities necessitated by the project;

(14) a description of Title 23 or 49, United States Code funding received by the project, including the date (or anticipated date) of receipt and types and amount of financial assistance; and

(15) any additional information the department deems necessary to fully consider the application.

§5.86. Suspension of Applications.

If the commission determines that private activity bond allocations from the US DOT are fully committed or other uncertainties exist that warrant suspension of acceptance of applications, the department will publish a notice in the *Texas Register* providing that applications will no longer be accepted. When conditions change, as determined by the commission, the department will publish a notice in the *Texas Register* that applications are again being accepted.

§5.87. Department Action.

(a) Notification to Texas Bond Review Board.

(1) The department will notify the executive director of the Board of all department applications to the US DOT for the issuance of private activity bonds for highway or surface freight transfer facility projects. The notification will include a copy of the application.

(2) The department will notify the executive director of the Board once an application submitted by an eligible entity under this subchapter is received. Two copies of the application will be forwarded to the executive director of the Board.

(b) Review of applications. The department will coordinate its review of applications with the review carried out by the staff of the Board. Applications will be reviewed to assess if:

(1) the application submitted is from an eligible entity;

(2) the application submitted is for an eligible project and is otherwise eligible under federal law; and

(3) the overall financial plan submitted in the application is reasonable and supports the project's financing (including the issuance of the private activity bonds), including an assessment of:

(A) whether the proposed project funding sources are sufficient to cover estimated project costs;

(B) whether projected revenues are sufficient to make required debt service payments;

(C) the sufficiency of projected debt service coverage ratios; and

(D) the capability of the proposed financing and development team.

(c) Report to commission. Department staff will provide a summary memorandum to the commission on the findings of the application review by the department and Board staff.

§5.88. Commission Action.

(a) Commission analysis. The commission may consider the advice of department staff and their consultants regarding the sufficiency of the information, the probable accuracy of projections, the anticipated financial condition of the application and the project, and any other information the commission determines appropriate.

(b) Criteria. In determining whether to approve an application, the commission will consider:

(1) the reasonableness of the financial plan submitted in the application;

(2) the transportation need for and anticipated public benefit of the project, including the impact of the project on reducing congestion, enhancing economic opportunity, enhancing safety, improving air quality, and increasing the value of transportation assets;

(3) the analysis of the application by the staff of the Board; and

(4) the ability of the department to construct any improvements to the state highway system required by the project.

(c) Notification to applicant and US DOT. The executive director will notify the applicant, in writing, upon completion of the review and analysis and of the determination on whether the application is approved for consideration by the US DOT or disapproved. For approved applications, the executive director will notify the US DOT and forward the application for US DOT consideration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2007.

TRD-200700217

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: March 11, 2007
For further information, please call: (512) 463-8630

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 9. LP-GAS SAFETY RULES

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.2, 9.7, 9.10, 9.11, 9.52

The Railroad Commission of Texas adopts amendments to §§9.2, 9.7, 9.10, 9.11, and 9.52, relating to Definitions; Application for License and License Renewal Requirements; Rules Examination; Previously Certified Individuals; and Training and Continuing Education Courses. The amendments to §§9.2, 9.10, and 9.52 are adopted with changes and the remaining sections are adopted without changes to the text as published in the December 1, 2006, issue of the *Texas Register* (31 TexReg 9670). The Commission adopts these amendments to clarify some wording and procedures for the training and continuing education requirements.

In §9.2, the Commission amends the definition of "certificate holder" in paragraph (9) to add wording concerning transport drivers who hold a reciprocal examination exemption from another state pursuant to §9.18, relating to Reciprocal Examination Agreements with Other States, and general installers and repairmen who hold examination exemptions from the Commission's Gas Services Division pursuant to §9.13, relating to General Installers and Repairman Exemption. The purpose of this amendment is to clarify that holders of these examination exemptions receive Commission certification cards, enjoy the same rights and privileges, and are subject to the same requirements as individuals who are Commission-certified in these categories. In paragraphs (25) and (26), the Commission adopts new definitions for "mobile fuel container" and "mobile fuel system." The purpose of these amendments is to conform the definitions of these terms to the definitions in Texas Natural Resources Code §113.002(17) and §113.002(18). In the definition of "person" in renumbered paragraph (35), the Commission substitutes the word "venture" for "ventureship." In new paragraph (39), a new definition of "recreational vehicle" is adopted, consistent with the definition of this term in National Fire Protection Association (NFPA) handbook 1192, Standard on Recreational Vehicles (1999 edition). Paragraphs are numbered or renumbered so that the defined terms remain in alphabetical order.

The Commission adopts a minor change in §9.2(55), which was renumbered from paragraph (52). A publication error showed the text of paragraph (55) as being deleted; however, the only change to this definition was the renumbering.

In §9.7(a), the Commission reformats the long subsection to divide it into paragraphs, and to change the wording regarding training and continuing education requirements from "successfully completed" to "in compliance with the training and continuing education requirements." The reason for this change is that an individual who has passed an examination that subjects him or her to a first-year training requirement, but who has not yet completed the training requirement, is in compliance with the Commission's training requirements and legally may work until the next May 31. Another adopted amendment in §9.7(a)(3) adds wording to clarify that certified individuals must be employed by a licensee or by a license-exempt entity, such as a political subdivision or a state agency. In addition, new §9.7(a)(4) is added to clarify that holders of general installer and repairman exemptions under §9.13 may legally perform the LP-gas activities authorized by such exemption. A sentence currently at the end of subsection (a) is moved to subsection (b) with another existing requirement for licensees.

In §9.10, the Commission adopts some clarifying wording in new paragraphs (1) - (8) to describe the LP-gas activities authorized by each employee-level examination, as well as activities *not* authorized by an examination. Some of this descriptive wording was previously found on the Table incorporated as part of this subsection. None of this wording adds any new requirements, but merely clarifies current Commission practice. Upon adoption, the Commission makes a minor change to the title of the "Motor/Mobile Fuel (Fuel Dispenser) Exam," to "Motor/Mobile Fuel Dispensing Exam" to clarify the subject of the exam. This change is made in both the rule text in subsection (b)(8) and on Table 1. Also, Table 1 is adopted to show the revision date as February 2007.

In §9.11(a), the Commission deletes the word "previously" to clarify that a licensee must file a transfer form when hiring a currently certified individual.

In §9.52(g), the Commission adopts a minor clarification in the reference in paragraph (3) to the 16-hour management-level class and adopts new paragraph (5) stating that a certified individual is exempt from the advanced field training (AFT) requirement of a continuing education course if the individual has previously completed that same course, including the required AFT. In subsection (h), some changes are adopted in the Tables. On Table 1, the row for course 2.2 is deleted because that course has been superseded by other subsequently developed courses. For courses 3.1, 3.5, 3.7, 3.11, and the 16-hour Category F, G, I and J Management course, the "x" is deleted from the AFT column because these courses now include similar hands-on activities during the classes. In the title of the table, the date of "September 2005" is changed to "Revised February 2007" to indicate the month that these changes will be effective. On Table 2, the same changes are adopted as for Table 1 concerning the row for course 2.2 and

the removal of AFT for courses 3.1, 3.5, 3.7, and 3.11, the 16-hour Category F, G, I and J Management course, and the revision date. In addition, another adopted change for course 2.1 adds an "x" in the column for "Bobtail" and "Bobtail Service & Installation" to indicate that course 2.1 will be an approved course for these two categories of employee-level certification. This change would offer drivers whose job descriptions include filling bottles to take the Dispenser Operations course to fulfill their continuing education requirement. On both Tables 2 and 4, the Commission has deleted an obsolete footnote. No changes were proposed in Table 3, which will retain the September 2005 date.

The Commission received two comments on the proposed amendments. One comment, made in person by the representative of an association (Texas Propane Gas Association), expressed support for the amendments.

Another comment suggested changes to §9.7 and §9.10. The comment stated that §9.7 could be confusing to the average person, who might think that an examination is a license, and suggested that the rule be reorganized. This commenter also stated that the new wording in §9.10(a)(8) excludes an individual certified under a motor/mobile fuel examination from filling a stationary container; the comment said that the Commission seems to be referring here to a residential home-type container, not one that is permanently mounted (stationary) on a motor home vehicle, or trailer. The commenter stated that the word "stationary" should be expanded to define a residential container. For §9.10(b)(1) regarding the bobtail examination, the commenter noted that the examination requirements, and the activities authorized by the examinations, have changed several times since 1982, and stated that the rule should address the various changes for clarification.

The Commission disagrees with these comments. With respect to §9.7, Application for License and License Renewal Requirements, the Commission has proposed changes only to subsections (a) and (b). Subsection (a) requires licensees' employees who handle LP-gas to have passed any applicable rules examination, and §9.7(b) requires licensees to make the Commission's current LP-gas safety rules available to their employees. The provisions of these two subsections do not exhaust the Commission's license application and license renewal requirements. Additional licensing requirements, including requirements relating to forms, fees, and insurance, are set out at length in §9.7(c) - (g). In addition, the Commission's examination and examination-renewal requirements are treated separately and in detail in §9.8, relating to Application for a New Certificate; §9.9, relating to Requirements for Certificate Renewal; and §9.10, relating to Rules Examination. For these reasons, the Commission finds it unlikely that a reader of these rules would consider an examination to be equivalent to a license.

With respect to §9.10(a)(8), the Commission agrees that the proposed change is intended to clarify the Commission's long-standing policy that the holder of a Motor/Mobile Fuel Dispensing certification may not fill a stationary container, residential or otherwise. The Commission disagrees, however, that the proposed clarification could cause an ASME motor/mobile fuel container that is permanently mounted on a vehicle such as a trailer or a motor home to be considered a stationary container that the holder of a Motor/Mobile Fuel Dispensing certification could not fill, since the fact that such a container is mounted on a vehicle makes the container mobile by definition.

With respect to §9.10(b)(1), the Commission disagrees that a rule should address obsolete provisions and notes that such provisions are routinely addressed in the preambles of proposed rules.

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.087, which authorizes the Commission to establish by rule an initial course of instruction for any person who has not yet passed the examination for the LPG activity for which the person seeks qualification; for any person who has not maintained qualified status, as defined by rule; and for any person whose certification has been revoked; and which requires the Commission, by appropriate rule, to require attendance at approved academic, trade, professional, or Commission-sponsored seminars, or other continuing education programs.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.087.

Sections affected: Texas Natural Resources Code, §113.051 and §113.087.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on January 23, 2007.

§9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advanced field training (AFT)--The final portion of the training or continuing education requirements in which an individual shall successfully perform the specified LP-gas activities in order to demonstrate proficiency in those activities.

(2) AFRED--The Commission's Alternative Fuels Research and Education Division.

(3) AFT materials--The portion of a Commission training module consisting of the four sections of the Railroad Commission's LP-Gas Qualifying Field Activities, including General Instructions, the Task Information, the Operator Qualification Checklist, and the Railroad Commission/Employer Record.

(4) Aggregate water capacity (AWC)--The sum of all individual container capacities measured by weight or volume of water which are placed at a single installation location.

(5) Applicant--An individual:

(A) who is applying for a new certificate; or

(B) whose certification has lapsed for a period of less than two years and who is applying to restore certification by paying any applicable fees and by completing any applicable training or continuing education requirements.

(6) Bobtail driver--An individual who operates an LP-gas cargo tank motor vehicle of 5,000 gallons water capacity or less in metered delivery service.

(7) Breakaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a breakaway device.

(8) Categories of LPG activities--The LP-gas license categories as specified in §9.6 of this title (relating to Licenses and Fees).

(9) Certificate holder--An individual:

(A) who has passed the required management-level qualification examination, satisfactorily completed any applicable training or continuing education requirements as specified in §9.52 of this title (relating to Training and Continuing Education Courses), and paid the applicable fee; or

(B) who has passed the required employee-level qualification examination, paid the applicable fees, and complied with the training or continuing education requirements in §9.52 of this title (relating to Training and Continuing Education Courses); or

(C) who has passed the required employee-level qualification examination, has paid the applicable fee, and is required to comply with a training requirement as specified in §9.52 of this title (relating to Training and Continuing Education Courses); or

(D) who holds a current reciprocal examination exemption pursuant to §9.18 of this title (relating to Reciprocal Examination Agreements with Other States); or

(E) who holds a current examination exemption certificate pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption).

(10) Certified--Authorized to perform LP-gas work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

(11) CETP--The Certified Employee Training Program offered by the Propane Education and Research Council (PERC), the National Propane Gas Association (NPGA), or their authorized agents or successors.

(12) Commercial installation--An LP-gas installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, bulk storage facility, convalescent home, hospital, retail LP-gas cylinder filling/exchange operation, service station, forklift refueling facility, private motor/mobile fuel cylinder filling operation, a microwave tower, or a public or private agricultural installation.

(13) Commission--The Railroad Commission of Texas.

(14) Company representative--The individual designated to the Commission by a license applicant or a licensee as the principal individual in authority and, in the case of a licensee other than a Category P licensee, actively supervising the conduct of the licensee's LP-gas activities.

(15) Container delivery unit--A vehicle used by an operator principally for transporting LP-gas in cylinders.

(16) Continuing education--Courses required to be successfully completed at least every four years by certain certificate holders.

(17) DOT--The United States Department of Transportation.

(18) Employee--An individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, on a full-time or permanent basis, or, for purposes of this chapter, an owner-employee.

(19) Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LP-gas installation.

(20) Licensed--Authorized to perform LP-gas activities through the issuance of a valid license.

(21) Licensee--A person which has applied for and been granted an LP-gas license by the Commission, or who holds a master or journeyman plumber license from the Texas State Board of Plumbing Examiners or a Class A or B Air Conditioning and Refrigeration Contractors License from the Texas Department of Licensing and Regulation and has properly registered with the Commission.

(22) LP-Gas Safety Rules--The rules adopted by the Railroad Commission in the Texas Administrative Code, Title 16, Part 1, Chapter 9, including any NFPA or other documents adopted by reference. The official text of the Commission's rules is that which is on file with the Secretary of State's office and available at www.sos.state.tx.us or through the Commission's web site at www.rrc.state.tx.us.

(23) LP-gas system--All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.

(24) Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.

(25) Mobile fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(26) Mobile fuel system--An LP-gas system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(27) Motor fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.

(28) Motor fuel system--An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.

(29) MPS gas (Methylacetylene-propadiene, stabilized)--A mixture of gases in the liquid phase and as defined in Texas Natural Resources Code, Chapter 113, §113.002(4).

(30) Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of the American Society of Testing Material (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."

(31) Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)

(32) Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas operations and is authorized by the licensee to implement operational changes.

(33) Outlet--A site operated by an LP-gas licensee from which any regulated LP-gas activity is performed.

(34) Outside instructor--An individual, other than a Commission employee, approved by AFRED to teach certain LP-gas training or continuing education courses.

(35) Person--An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.

(36) Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.

(37) Property line--The boundary which designates the point at which one real property interest ends and another begins.

(38) Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses and mass transit or special transit vehicles), or airport courtesy vehicles.

(39) Recreational vehicle--A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle.

(40) Register (or registration)--The procedure to inform the Commission of the use of an LP-gas transport or container delivery unit in Texas.

(41) Repair to container--The correction of damage or deterioration to an LP-gas container, the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(42) Rules examination--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current LP-Gas Safety Rules.

(43) School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(44) School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(45) Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(46) Specification unit--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Nonspecification unit" in this section.)

(47) Subframing--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(48) Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(49) Training--Courses required to be successfully completed as part of an individual's requirements to obtain or maintain certain certificates.

(50) Transfer--The procedure to inform the Commission of a change in operator of an LP-gas transport or container delivery unit already registered with the Commission.

(51) Transfer system--All piping, fittings, valves, and equipment utilized in dispensing LP-gas between containers.

(52) Transport--Any bobtail or semitrailer equipped with one or more containers.

(53) Transport driver--An individual who operates an LP-gas trailer or semi-trailer equipped with a container of more than 5,000 gallons water capacity.

(54) Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(55) Ultimate consumer--The individual controlling LP-gas immediately prior to its ignition.

§9.10. Rules Examination.

(a) An individual who files LPG Form 16 and pays the applicable nonrefundable examination fee may take the rules examination at the Commission's AFRED Training Center, 6506 Bolm Road, Austin, Texas, between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and at other designated times and locations around the state. Tuesdays and Thursdays are the preferred days for examinations at the AFRED Training Center.

(1) Dates and locations of available Commission LP-gas examinations may be obtained in the Austin offices of AFRED and on the Commission's web site at www.rrc.state.tx.us, and shall be updated at least monthly. Examinations shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that examinations be given in their area. AFRED shall schedule its examinations and locations at its discretion.

(2) Except in a case where a conditional qualification has been requested in writing and approved under §9.17(g) of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors), the Category E, F, G, I, and J management-level rules examination shall be administered only in conjunction with the Category E, F, G, I, and J management-level courses of instruction. Management-level rules examinations other than Category E, F, G, I, and J may be administered on any scheduled examination day.

(3) The Commission may not issue a certification card to an applicant for a management-level certificate that requires completion of a course of instruction until the applicant completes both the required course of instruction and passes the required management-level rules examination.

(4) An applicant for a management-level certificate shall pass the management-level rules examination within two years after completing a required course of instruction. An applicant who fails to pass such an examination within two years of completing such a course shall reapply as a new applicant.

(5) Exam fees.

(A) The nonrefundable management-level rules examination fee (for company representatives and operations supervisors) is $50.

(B) The nonrefundable employee-level rules examination fee (for employees other than company representatives or operations supervisors) is $20.

(C) The nonrefundable examination fee shall be paid each time an individual wishes to take the examination.

(D) Individuals who register and pay for a Category E, F, G, I, or J training course as specified in §9.51(f)(2)(A) of this title (relating to General Requirements for Training and Continuing Education) shall pay the charge specified for the applicable examination.

(b) Table 1 of this subsection specifies the examinations offered by the Commission.
Figure: 16 TAC §9.10(b)

(1) The Bobtail examination qualifies an individual to operate a bobtail, to perform all of the LP-gas activities authorized by the Transport Driver, DOT Cylinder Filling, and Motor/Mobile Fuel examinations, and to perform leak checks and pressure tests, light appliances, and adjust regulators and thermocouples. The Bobtail examination does not authorize an individual to connect or disconnect containers, except when performing a pressure test or removing a container from service.

(2) The Transport Driver examination qualifies an individual to operate an LP-gas transport equipped with a container of more than 5,000 gallons water capacity, to load and unload LP-gas, and connect and disconnect transfer hoses. The Transport Driver examination does not authorize an individual to operate a bobtail or to install or repair transport systems.

(3) The Engine Fuel examination qualifies an individual to install LP-gas motor or mobile fuel containers, cylinders, and LP-gas systems and replace container valves on motorized vehicles, including trailers, catering trucks, mobile kitchens, tar kettles and similar vehicles, and non-road vehicles such as industrial trucks and stationary engines such as generators and pumps. The Engine Fuel examination does not authorize an individual to fill LP-gas motor or mobile fuel containers.

(4) The DOT Cylinder Filling examination qualifies an individual to inspect, requalify, fill, disconnect and connect cylinders, including industrial truck cylinders, and to exchange cylinder valves. The DOT Cylinder Filling examination does not authorize an individual to fill ASME motor or mobile fuel containers.

(5) The Recreational Vehicle examination qualifies an individual to install LP-gas motor or mobile fuel containers, including cylinders, and to install and repair LP-gas systems on recreational vehicles. The Recreational Vehicle examination does not authorize an individual to fill LP-gas containers.

(6) The Service and Installation examination qualifies an individual to perform all LP-gas activities related to stationary LP-gas systems, including LP-gas containers and appliances. The Service and Installation examination does not authorize an individual to fill containers or operate an LP-gas transport.

(7) The Appliance Service and Installation examination qualifies an individual to perform all LP-gas activities related to appliances, including installing, repairing and converting appliances, installing and repairing connectors from the appliance gas stop through the venting system, and to perform leak checks on the new or repaired portion of an LP-gas system. The Appliance Service and Installation examination does not authorize an individual to install a container, install or repair piping upstream of and including the appliance gas stop, or to install, repair or adjust regulators.

(8) The Motor/Mobile Fuel Dispensing examination qualifies an individual to inspect and fill motor or mobile fuel containers on vehicles, including recreational vehicles, cars, trucks, and buses. The Motor/Mobile Fuel Dispensing examination does not authorize an individual to fill LP-gas cylinders or ASME stationary containers.

(c) Within 15 calendar days of the date an individual takes an examination, AFRED shall notify the individual of the results of the examination.

(1) If the examination is graded or reviewed by a testing service, AFRED shall notify the individual of the examination results within 14 days of the date AFRED receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFRED shall notify the individual of the reason for the delay before the 90th day. AFRED may require a testing service to notify an individual of the individual's examination results.

(2) Successful completion of any required examination shall be credited to and accrue to the individual.

(3) An individual who has been issued a certification card shall make the card readily available and shall present the card to any Commission employee or agent who requests proof of certification.

(d) Failure of any examination shall immediately disqualify the individual from performing any LP-gas related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed. If requested by an individual who failed the examination, AFRED shall furnish the individual with an analysis of the individual's performance on the examination.

(1) Any individual who fails an examination administered by the Commission only at the Austin location may retake the same examination only one additional time during a business day.

(2) Any subsequent examination shall be taken on another business day, unless approved by the assistant director for the AFRED Research and Technical Services Section or the assistant director's designee.

§9.52. Training and Continuing Education Courses.

(a) Training. Applicants for a new certification and applicants who have passed a certification examination but have not completed an applicable training course shall complete training as specified in the tables in subsection (h) of this section prior to their first certificate renewal deadline. Category E management-level applicants shall attend the 80-hour class; Category F, G, I, and J management-level applicants shall attend the 16-hour class; and Category D, K and M management-level applicants and all applicants for employee-level certifications that are subject to training requirements shall attend an eight-hour class. A certificate holder's training deadline shall not be extended if that individual retakes and passes an examination for the current category and level of certification. A training deadline shall be extended only after a certificate holder successfully completes an applicable training class.

(1) Individuals who pass an employee-level rules examination between March 1 and May 31 of any year shall have until May 31 of the next year to complete any required training. Individuals who pass an employee-level rules examination at other times shall have until the next May 31 to complete any required training. Completion of AFT shall be in accordance with subsection (g) of this section.

(2) Applicants for company representative or operations supervisor shall comply with the training requirements in this section prior to the Commission issuing a certificate.

(b) Continuing education. A certificate holder shall complete at least eight hours of continuing education every four years as specified in the tables in subsection (h) of this section. Upon fulfillment of this requirement, the certificate holder's next continuing education deadline shall be four years after the May 31 following the date of the most recent class the certificate holder has completed, unless the class was completed on May 31, in which case the deadline shall be four years from that date. A certificate holder's continuing education deadline shall not be extended if an examination for a current category and level of certification is retaken and passed; a continuing education deadline shall be extended only after a certificate holder successfully completes

an applicable continuing education class. An individual who completes a continuing education class after the assigned deadline shall have four years from the original deadline to complete the next class.

(1) Continuing education requirements for certain categories.

(A) Certificate holders who hold only a Category D, F, G, J, or K certificate as of the effective date of this section shall complete their initial continuing education requirement by May 31, 2005. Beginning September 1, 2005, Category M and recreational vehicle technician certificate holders shall have until May 31, 2006, to complete their initial continuing education requirement. Certificate holders who hold a Category D, F, G, J, K, or M certificate or a recreational vehicle technician certificate and who have more than one certification as of February 1, 2001, shall complete their continuing education requirement by the continuing education deadline assigned for the initial certificate. Public employees who are certified as of June 1, 2006, shall complete their continuing education requirement by May 31, 2007.

(B) Certificate holders who are certified to perform LP-gas activities covered by different certifications shall complete the continuing education requirements for any one of the certifications held in order to maintain active status. For each subsequent continuing education requirement, such individuals shall be responsible for attending a different continuing education class relevant to one of the other certifications held.

(2) Certificate holders who attend a class offered by an outside instructor shall not be entitled to a refund of the annual renewal fee or any other fees or penalties required by the Commission.

(3) Individuals who have not paid the annual certificate renewal fee, including general installers and repairman exemption holders or members of the general public, shall not attend training or continuing education classes free of charge, but may request from the AFRED training section to attend classes at the charge specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education). Such requests shall be in writing and handled at AFRED's discretion on an individual basis and if space is available in the requested class.

(4) Any certificate holder who has timely paid the annual certificate renewal fee but is not otherwise required to attend a Commission continuing education class may voluntarily attend a class, if space is available, by registering with the AFRED training section as specified in §9.51 of this title (relating to General Requirements for Training and Continuing Education).

(c) Adding a new certification. A current certificate holder who successfully completes an examination for an additional certification that requires completion of a training course shall be assigned a training deadline pursuant to subsection (a)(1) of this section. Upon completion of the required training, the certificate holder shall be assigned a continuing education date pursuant to subsection (b) of this section.

(d) Train-the-Trainer classes. The Train-the-Trainer classes shall not count as credit towards the training or continuing education requirements.

(e) Class materials. Individuals who attend AFRED-taught classes shall receive a copy of the class materials at no charge. Additional copies may be purchased from AFRED at the established price.

(f) Certificates of completion. The AFRED training section shall issue a certificate of completion to each individual who completes an AFRED-taught class. Individuals shall retain the certificates as proof of completion of the class.

(g) Advanced field training (AFT). Some classes may include AFT in addition to the classroom hours, during which class attendees shall perform LP-gas activities. AFT shall be properly completed within 30 calendar days of attending the class. All qualification tasks included in the AFT shall be completed. The AFT materials, including the qualification checklist and the certification page, shall be readily available at the licensee's Texas business location for review by an authorized Commission representative during normal business hours.

(1) The responsibility of certifying AFT activities shall not be delegated to an unauthorized individual. AFT qualification tasks shall be witnessed by an authorized individual, verified as being successfully completed, and the AFT form signed as follows:

(A) For licensees with only one company representative, that company representative shall self-certify the AFT.

(B) For licensees with more than one company representative, one company representative may certify the AFT of another company representative, but shall not self-certify.

(C) Company representatives shall certify operations supervisors' AFT.

(D) The company representative or an operations supervisor authorized by the licensee and in current good standing with the Commission shall certify the employees' AFT.

(E) If authorized, a Commission-approved outside instructor may certify any AFT.

(2) Other AFT situations shall be handled as follows:

(A) For a certified individual employed by a licensee, the licensee shall retain the most recently completed AFT material for each applicable category of the individual's certification in the individual's employment records.

(B) For an individual who ceases employment with a licensee, the licensee shall retain the latest required AFT material for at least two years from the date the individual is no longer employed by the licensee. The two-year period shall be based on the renewal period for the examination renewal fee penalty. The licensee shall provide a copy of the AFT material to the individual.

(C) For an individual who begins employment with a different licensee, the new licensee shall obtain a copy of the individual's AFT material from the individual and shall place the copy in the individual's employment records.

(D) An individual who is never employed by a licensee shall retain the most recently completed AFT material for each applicable category of the individual's certification in a safe location for at least two years from the date the class that required the AFT was attended.

(E) For an individual who is employed by a licensee when a class requiring AFT is attended, but who prior to the AFT's being certified becomes employed by a new licensee, the new licensee shall certify the individual's AFT.

(F) For an individual who is employed by a licensee when a class requiring AFT is attended, but who prior to the AFT's being certified ceases employment with the licensee and wishes to continue performing LP-gas activities, the individual shall contact a company representative or operations supervisor of another applicable licensee or an AFRED-approved outside instructor to complete the AFT and maintain the LP-gas certification.

(3) Individuals who attend the 80-hour Category E management-level class or the 16-hour Category F, G, I, and J manage-

ment-level class shall perform any required AFT activities during the class.

(4) If AFT is required for a class, the AFT checklist outlining the specific activities to be performed shall be included in the class materials.

(5) A certified individual is exempt from the AFT requirement of a continuing education course if the individual has previously completed that same course, including the AFT.

(h) Available courses. Training and continuing education courses and other information are shown in Tables 1 through 4 of this subsection. Items on the tables marked with an "x" indicate courses that meet training or continuing education requirements for management-level or employee-level certificate holders in that category.
Figure: 16 TAC §9.52(h)

(i) Credit for attendance at CETP courses. A certificate holder who has successfully completed a CETP class, including any applicable knowledge and skills assessments, may receive credit toward the continuing education requirements specified in this section as follows:

(1) The CETP class shall be approved for the category of certificate held as indicated on Tables 3 and 4 in subsection (h) of this section.

(2) The successful completion of a CETP class is determined by a National Propane Gas Association class certificate, which is issued only after an individual has completed the prescribed course of study, including any related knowledge and skills assessments, for the applicable CETP job classification.

(3) To receive credit toward the Commission's continuing education requirements, the certificate holder shall submit the following information, clearly readable, by regular mail to AFRED, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, or by electronic mail to the following address: CETP-credit@rrc.state.tx.us.

(A) the individual's full name, address, telephone number, Social Security number;

(B) the LP-gas certification(s) currently held; and

(C) the CETP class date and a readable copy of the CETP class certificate for an approved CETP class as specified in Tables 3 and 4 of subsection (h) of this section. The CETP class attendance date shall be within one year of the certificate holder's continuing education deadline.

(4) AFRED shall review the submitted material within 30 business days of receipt and shall notify the certificate holder in writing that the request is approved, denied, or incomplete. If the material is incomplete, AFRED shall identify the necessary additional information required. The certificate holder shall file the additional information within 30 calendar days of the date of a notice of deficiency in order to receive credit for the CETP course attendance. Certificate holders requesting credit for CETP class attendance shall submit such requests to allow processing time so that a request is finally approved by May 31 in order for the certificate holder to receive credit toward that deadline.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2007.

TRD-200700160

Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: February 12, 2007
Proposal publication date: December 1, 2006
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board adopts amendments to §1.16, concerning Contracts for Materials and Services, with changes to the proposed text as published in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9780).

Specifically, these amendments provide the Chair and Vice Chair of the Board the authority to provide final approval of contracts for purchases approved by the Agency Operations Committee or the full Board and to approve requests and contracts for emergency purchases. The amendments will also allow the Commissioner to delegate contract approval authority for contracts equal to or less than $5,000 or if the Commissioner will be unavailable to approve contracts for more than one business day.

No comments were received regarding amendments.

The amendments are adopted under the Texas Education Code, §61.067, which provides the Coordinating Board with the authority to contract and Texas Education Code §61.027 which provides the Board with the authority to adopt rules.

§1.16. Contracts for Materials and Services.

(a) The Board shall approve all requests for the purchase of materials or services if the cost for those materials or services is expected to exceed $750,000.00. After a vendor is selected, the Chair and Vice Chair of the Board shall provide final approval of the contract with the selected vendor.

(b) The Agency Operations Committee shall approve all requests for the purchase of materials or services if the cost for those materials or services is greater than $100,000.00 but less than or equal to $750,000.00. After a vendor is selected, the Chair and Vice Chair of the Board shall provide final approval of the contract with the selected vendor.

(c) The Commissioner shall approve all contracts for the purchase of materials or services if the contract amount is less than or equal to $100,000.00. The Commissioner may delegate his approval authority to a deputy, associate, or assistant commissioner if:

(1) The contract amount is less than or equal to $5,000; or

(2) The Commissioner will be away from the agency and unavailable to approve contracts for more than one business day.

(d) The Commissioner shall provide a report to the Agency Operations Committee, at least quarterly, describing all contracts for the purchase of materials or services.

(e) The Chair and Vice Chair of the Board shall have the authority to approve emergency purchase requests and contracts for materials or services over $100,000 that must be entered into in order to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state. Emergency purchase requests and contracts shall be exempt from subsections (a) and (b) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 29, 2007.

TRD-200700241
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 18, 2007
Proposal publication date: December 8, 2006
For further information, please call: (512) 427-6114

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19 TAC §1.17

The Texas Higher Education Coordinating Board adopts new §1.17, concerning Agency Administration, with changes to the proposed text as published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10237).

Specifically, this new section will authorize the Commissioner to provide direct supervision of the Education Research Centers created by Texas Education Code, §1.005.

No comments were received regarding the new rule; however the wording educational research centers was changed to Education Research Centers to keep the wording consistent with the Texas Education Code.

The new rule is adopted under the Texas Education Code, §61.027, which gives the Coordinating Board the authority to adopt rules.

§1.17. Authority of the Commissioner to Provide Direct Supervision of the Education Research Centers.

The Board authorizes the Commissioner to provide direct supervision of the Education Research Centers created by Texas Education Code §1.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 29, 2007.

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Bill Franz
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Proposal publication date: December 22, 2006
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CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.3

The Texas Higher Education Coordinating Board adopts amendments to §4.3, concerning definitions for rules applying to all public institutions of higher education in Texas, without changes to the proposed text as published in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9781). Specifically, these amendments will delete definitions for College Readiness Standards and Statewide College Readiness Vertical Teams and move these definitions for clarification purposes to Chapter 4, Subchapter H, concerning P-16 college readiness and success.

No comments were received concerning these amendments.

These amendments are adopted under the Texas Education Code, §28.008(c), which provides the Coordinating Board with the authority to adopt rules to establish the composition and duties of statewide college readiness teams.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 29, 2007.

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Bill Franz
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For further information, please call: (512) 427-6114

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SUBCHAPTER H. P-16 COLLEGE-READINESS AND SUCCESS

19 TAC §4.171, §4.172

The Texas Higher Education Coordinating Board adopts amendments to §4.171 and §4.172, concerning P-16 college readiness and success which apply to all public institutions of higher education in Texas, without changes to the proposed text as published in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9782). Specifically, these amendments will rearrange previously adopted sections of the rules as a result of new sections proposed in a separate filing that are necessary for implementation of the applicable portions of §5.08 of House Bill 1, Third Called Session 2006.

No comments were received concerning the amendments.

The amendments are adopted under the Texas Education Code, §§28.008, 61.0761, and 61.0762, which provides the Coordinating Board with the authority to adopt rules to develop and adopt college readiness standards, to implement the P-16 college readiness and success strategic action plan, and to estab-

lish and implement programs to enhance student success in entry-level college courses, respectively.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
General Counsel
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Proposal publication date: December 8, 2006
For further information, please call: (512) 427-6114

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19 TAC §4.173, §4.174

The Texas Higher Education Coordinating Board adopts the repeal of §4.173 and §4.174, concerning P-16 college readiness and success which apply to all public institutions of higher education in Texas, without changes to the proposed text as published in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9782). Specifically this repeal will rearrange previously adopted sections of the rules as a result of new sections proposed in a separate filing that are necessary for implementation of the applicable portions of §5.08 of House Bill 1, Third Called Session 2006.

No comments were received concerning the repeal.

The repeal is adopted under the Texas Education Code, §§28.008, 61.0761, and 61.0762, which provides the Coordinating Board with the authority to adopt rules to develop and adopt college readiness standards, to implement the P-16 college readiness and success strategic action plan, and to establish and implement programs to enhance student success in entry-level college courses, respectively.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz
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19 TAC §§4.173 - 4.177

The Texas Higher Education Coordinating Board adopts new §§4.173 - 4.177, concerning P-16 college readiness and success which apply to all public institutions of higher education in Texas, with changes to the proposed text as published in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9783). Specifically, these new sections will create new definitions for use in P-16 college readiness and success, describe the purpose of the P-16 college readiness and success strategic action plan and the initiatives it supports, and establish the criteria for student participation and institutional and public school eligibility for programs to enhance student success that are necessary for implementation of the applicable portions of §5.08 of House Bill 1, Third Called Session 2006.

The following comments were received regarding the new sections:

Comment: One comment was received from staff of the Governor's Office concerning the minor revision to the definition, College Readiness Standards. The originally adopted definition stated "The knowledge and skills expected of students to perform successfully in the workplace and in entry-level courses offered at institutions of higher education." Staff attempted to give additional clarification to the definition by proposing the definition eliminate "in the workplace" and add "and in that part of the workplace requiring similar knowledge and skills" at the end of the definition. Governor's Office staff believes this clarification is more complicated than the original definition and is unnecessary.

Response: Staff agrees and recommends the original definition be adopted.

The new sections are adopted under the Texas Education Code §§28.008, 61.0761, and 61.0762, which provides the Coordinating Board with the authority to adopt rules to develop and adopt college readiness standards, to implement the P-16 college readiness and success strategic action plan, and to establish and implement programs to enhance student success in entry-level college courses, respectively.

§4.173. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Closing the Gaps by 2015--The master plan for higher education for the state of Texas, adopted in October 2000 by the Texas Higher Education Coordinating Board, directed at closing educational gaps within Texas, as well as between Texas and other states, and which has four goals: to close the gaps in student participation, student success, excellence, and research.

(2) College entrance assessment--The ACT and SAT or other assessments as determined by the commissioner that serve as indicators of student college readiness.

(3) College readiness assessment--The ACT PLAN and College Board Preliminary SAT or other assessments as determined by the commissioner that serve as early indicators of student college readiness.

(4) College readiness standards--The knowledge and skills expected of students to perform successfully in the workplace and in entry-level courses offered at institutions of higher education.

(5) College ready student--One who has the knowledge and skills necessary to begin entry-level college courses with a reasonable likelihood of success and does not require developmental education.

(6) Commissioner--The commissioner of higher education.

(7) Faculty--A person who is employed by an institution of higher education on a full- or part-time basis as a member of the faculty or staff and whose duties including teaching, research, administration (including professional librarians), or the performance of professional

services. The term does not include a person employed in a position which is in the institution's classified personnel system, or a person employed in a similar type of position if the institution does not have a classified personnel system.

(8) Institution of higher education or institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(9) Statewide discipline-based college readiness vertical teams--Teams composed of public school educators and higher education faculty whose duties are consistent with those provided under §28.008(b) of the Texas Education Code.

§4.174. P-16 College Readiness and Success Strategic Action Plan

(a) To increase student success and decrease the number of students enrolling in developmental course work in institutions of higher education, the board, in cooperation with the commissioner of education, shall implement the P-16 College Readiness and Success Strategic Action Plan as recommended by the statewide P-16 Council and adopted by the board pursuant to Texas Education Code, §61.0761(a).

(b) The initiatives and activities to be implemented under the P-16 College Readiness and Success Strategic Action Plan include the creation of statewide discipline-based vertical teams outlined in Texas Education Code, §28.008, and programs to enhance student success outlined in Texas Education Code, §61.0762.

§4.175. Composition and Duties of Statewide Discipline-Based College Readiness Vertical Teams.

(a) There shall be a total of four statewide discipline-based college readiness vertical teams: one each in English/Language Arts, Mathematics, Science, and Social Studies. All teams shall be composed of a minimum of 8 and a maximum of 20 members per subject area who represent the following:

(1) All levels of public school educators;

(2) Faculty from higher education to include public junior colleges, public community colleges, public technical institutes, public state colleges, public senior colleges or universities, and private or independent institutions of higher education as defined in Texas Education Code, §61.003;

(3) A balance between small and large districts;

(4) Various geographic regions of the state; and

(5) Overall demographics of the state.

(b) A maximum of 60 percent of the statewide discipline-based college readiness vertical teams shall be composed of faculty from institutions of higher education.

(c) The statewide discipline-based college readiness vertical teams shall develop college readiness standards as defined in Texas Education Code, §28.008(b)(1). The teams may create an interdisciplinary vertical team composed of one public education member and one higher education member from each discipline-based college readiness vertical team to review the standards and determine commonalities among the disciplines. The statewide discipline-based college readiness vertical teams shall recommend the college readiness standards to the commissioner of education and the commissioner.

(d) Upon completion of the development of college readiness standards, the statewide discipline-based college readiness vertical teams shall develop recommendations for curriculum alignment with college readiness standards and other materials as defined in Texas Education Code, §28.008(b)(2) - (5). The teams shall be re-constituted at that time to ensure that a maximum of 60 percent of each of the re-constituted statewide discipline-based college readiness vertical teams shall be composed of secondary public education teachers employed full-time in Texas public school districts.

(e) In conjunction with the vertical teams, the commissioner shall appoint an advisory committee of no fewer than 12 members and no greater than 15 members that include representatives from each of the six targeted cluster industries as defined by the governor, to review and make recommendations regarding development of college readiness standards in each of the four subject matter areas.

§4.176. Appointment of Higher Education Faculty to the Statewide Discipline-Based College Readiness Vertical Teams.

(a) The commissioner shall determine the criteria for selecting faculty from institutions of higher education for appointment to the four statewide discipline-based college readiness vertical teams.

(b) The commissioner shall solicit recommendations for appointment from institutions of higher education and appropriate higher education organizations.

(c) Appointments by the commissioner to the statewide discipline-based college readiness vertical teams outlined in §4.173(a) shall be made no later than December 29, 2006.

(d) Members representing institutions of higher education on the statewide discipline-based college readiness vertical teams outlined in §4.173(a) may be removed or replaced at the discretion of the commissioner.

§4.177. Criteria for Student Participation and Institutional and Public School Eligibility for Implementing Programs to Enhance Student Success.

(a) Summer higher education bridge programs. The purpose of this program is for institutions of higher education to provide public high school students who are not college-ready with appropriate instruction and other activities during summer programs to ensure eligible students achieve college readiness.

(1) Only institutions offering summer bridge programs outlined under Texas Education Code, §61.0762, shall be subject to this subsection.

(2) Each year for which state appropriations or other funding is available, the commissioner or his/her designee shall issue a request for proposal/application, memorandum of understanding, or other agreement for institutions to implement summer bridge programs under this subsection. The focus of these programs shall include mathematics, science, and/or English language arts for the following categories of public high school students:

(A) Exiting 12th grade students, in the summer following their senior year, who have not met the minimum passing standards for college readiness as outlined under §4.57 of this title (relating to Minimum Passing Standards) or who are not exempt from requirements of the Texas Success Initiative as outlined under §4.54 of this title (relating to Exemptions/Exceptions); or

(B) 10th and 11th grade students, in the summer following their sophomore and junior year, respectively, who have not achieved the predicted score for college readiness on the Texas Assessment of Knowledge and Skills, or appropriate college readiness predictors or scores on other assessments of college readiness as determined by the commissioner.

(3) Other qualifications or requirements for student participation, public school eligibility, and institutional eligibility for implementing summer bridge programs shall be outlined in the request for proposal/application, memorandum of understanding, or other agreement.

(b) Developmental education initiatives. The purpose of this program is to provide incentive funding to institutions who commit to implementing research-based and/or innovative developmental education initiatives.

(1) Only institutions offering developmental education initiatives under Texas Education Code, §61.0762, shall be subject to this subsection.

(2) Each year for which state appropriations or other funding is available, the commissioner or his/her designee shall issue a request for proposal/application, memorandum of understanding, or other agreement for institutions to implement developmental education initiatives under this subsection. The focus of these programs shall include mathematics, science, and/or English language arts for students who have not met the minimum passing standards for college readiness as outlined under §4.57 of this title (relating to Minimum Passing Standards) or who are not exempt from requirements of the Texas Success Initiative as outlined under §4.54 of this title (relating to Exemptions/Exceptions).

(c) Financial aid for college readiness and college entrance assessments. The purpose of this program is to obtain early assessments of college readiness and preparation of high school students.

(1) Financial aid shall be provided for each eligible high school student on an annual basis as determined by the commissioner.

(2) Each year for which state appropriations or other funding is available, the commissioner or his/her designee shall determine the college readiness and college entrance assessments that will be funded under this subsection.

(d) Professional development for higher education faculty. The purpose of this program is to provide higher education faculty with professional development programs or activities on college readiness standards and the implications of these standards on instruction.

(1) Only institutions offering professional development for faculty outlined under Texas Education Code, §61.0762, shall be subject to this subsection.

(2) Each year for which state appropriations or other funding is available, the commissioner or his/her designee shall issue a request for proposal/application, memorandum of understanding, or other agreement for institutions to implement activities or programs of professional development for faculty under this subsection. The focus of these programs shall be limited to faculty who have responsibilities for developmental education and entry-level courses and to the knowledge and skills, reflected in the college readiness standards, that faculty can reasonably expect students to have achieved who are entering those courses from public schools.

(3) Other qualifications or requirements for institutional eligibility for implementing faculty professional development activities and programs shall be outlined in the request for proposal/application, memorandum of understanding, or agreement.

(e) Other programs that support the participation and success goals of Closing the Gaps by 2015. Additional programs may be identified by the commissioner to address the participation and success goals of Closing the Gaps by 2015. As programs are identified, qualifications and requirements for student participation and institutional or public school eligibility shall be determined by the commissioner or his/her designee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 29, 2007.

TRD-200700237
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 18, 2007
Proposal publication date: December 8, 2006
For further information, please call: (512) 427-6114

CHAPTER 21. STUDENT SERVICES
SUBCHAPTER X. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.728, 21.730, 21.731, 21.733

The Texas Higher Education Coordinating Board adopts amendments to §§21.728, 21.730, 21.731, 21.733, and Charts II, III, and IV of Board rules, concerning Determination of Resident Status and Waiver Programs for Certain Nonresident Persons, without changes to the proposed text as published in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9786).

Specifically, the amendments to §21.728(3) removes the reference to core questions previously included as Chart II, indicates the core questions will be made available through the Texas Common Application or via the Coordinating Board web site, and indicates which core questions should be used for enrollments before and after academic year 2008 - 2009. The amendment to §21.728(9) clarifies that a student's financial need is to be calculated by comparing his or her family resources to the institution's cost of attendance. This process is relevant to three waiver programs described in §21.735 of the rules. The amendments to §21.728(17), §21.728(19), and §21.730(a)(1)(A) are intended to address a legislative public policy pronouncement regarding "nontraditional secondary education." New §21.728(17) provides a definition of "nontraditional secondary education" that encompasses home schools. The reference in §21.728(20) (formerly §21.728(19)) to a home school program not being included in the definition of a "private high school" has been deleted as unnecessary. The Legislature, in §51.9241(b) of the Texas Education Code, declared, in pertinent part, that "the State of Texas considers successful completion of a nontraditional secondary education to be equivalent to graduation from a public high school" and then proceeded to instruct institutions of higher education to treat students successfully completing such a program "according to the same general standards as other applicants for undergraduate admission who have graduated from a public high school." A student who successfully completes a course of study at the secondary school level in a home-school program can thereby be considered as having received the equivalent of a high school diploma in Texas and is therefore eligible to establish residency based on the provisions set forth in §21.730(a)(1)(A). This change brings the Board's rules into accord with Texas Education Code 54.052(a)(3)(A), which indicates that a person can meet one of the residency determinants by graduating "from a public or private high school in this state" or by receiving "the equivalent of a high school diploma in this state." Subsections 21.728(17) - (26) have been renumbered as §§21.728(18) - (27) due to the addition of new

§21.728(17). The amendment to §21.730(a)(1)(A) simply adds the phrase "including the successful completion of a nontraditional secondary education" to make it clear that students following this route should also be considered to have met the aforementioned determinant of residency by virtue thereof. The amendments to §§21.731(b) and (c) reflect the removal of the core questions (Chart II) from Coordinating Board rules and the subsequent renumbering of Charts III and IV. The core questions will now be housed on the Coordinating Board's web site. The amendment to §21.733(a) reflects the removal of the core questions (Chart II) from Coordinating Board rules and the subsequent renumbering of Chart IV. Chart II (Core Residency Questions) is deleted in order to move this document and its instructions to the Coordinating Board's web site, where improvements in the wording of questions and/or instructions will not require Board approval through a formal rulemaking process every time a change is indicated. Chart III is renumbered as Chart II and Chart IV is renumbered as Chart III.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 29, 2007.

TRD-200700233
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: February 18, 2007
Proposal publication date: December 8, 2006
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER D. PROCEDURES AFTER HEARING

22 TAC §519.72

The Texas State Board of Public Accountancy adopts an amendment to §519.72 concerning Procedures After Hearing without changes to the proposed text as published in the November 24, 2006, issue of the *Texas Register* (31 TexReg 9567). The text of the rule will not be republished.

The amendment makes it clear that the responsibility of final decisions and sanctions rests with the Board.

The amendment states that the Board makes final decisions in all disciplinary matters, including the assessment of sanctions.

Two comments were received regarding adoption of the rule from Marc R. Core, CPA and President of the Texas Association of Certified Public Accountants.

The first comment suggested that the Board provide that the ruling of the Administrative Law Judge (ALJ), not the Board, make the final decision. Mr. Core suggested that the Board making the final determination could be construed as arbitrarily denying a licensee due process by having the same agency that brings the action also decide the matter. The committee does not agree with the comment because the Board members deciding the case are in no way associated with the prosecution of the case. The separation of the prosecution by the committee and the staff provide a fair process.

The second comment suggested that a copy of the final decision or order of the Board shall be delivered or mailed to all parties and, if represented by counsel, to their attorneys of record. We are in agreement that the respondent or respondent's attorney should be notified by the Board with sufficient time to provide an opportunity to file a timely motion for rehearing. The existing Board rule provides for mailed notices. The Board's practice has been to interpret those rules to mean that the 20 days to file a motion for rehearing, when the respondent was not present during the Board's action, does not begin to run until notice has been mailed. This allows the time Mr. Core is seeking.

Mailing notice of the decision to the respondent, as suggested by Mr. Core, in addition to respondent's attorney would be an inappropriate communication by the Board's legal staff. When an individual is represented by legal counsel the Board's legal staff may only communicate with that person's attorney. Mailing notice to both respondent and his attorney would violate State Bar rules.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2007.

TRD-200700218
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 15, 2007
Proposal publication date: November 24, 2006
For further information, please call: (512) 305-7848

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 90. INNOVATIVE PROGRAMS

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§90.2, 90.30, 90.36, 90.40, 90.42, and 90.44 *without changes* to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7239). The text of the amendments will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bills (HB) 2912 and 2997, 77th Legislature, 2001, created Texas Water Code (TWC), §5.131 and §5.127, respectively. These statutes require the commission to adopt, by rule, a comprehensive program that uses incentives to encourage entities to implement environmental management systems (EMSs). The statutes were passed in response to recommendations made by the Sunset Commission, as well as the Comptroller's *e-Texas* initiative. The intent of the legislation was to encourage regulated entities to use EMSs to help ensure compliance with applicable laws and regulations. In return, regulated entities could earn incentives, such as reduced inspection frequency and special consideration in their compliance history. The TCEQ adopted rules that took effect on December 16, 2001. The rules are codified in 30 TAC Chapter 90, Subchapter A §90.1 and §90.2 and Subchapter C, §§90.30, 90.32, 90.34, 90.36, 90.38, 90.40, 90.42 and 90.44.

The TCEQ implemented the rules through the Lone Star and National Leader (i.e., the two highest) levels of the *Clean Texas, Cleaner World* (CTCW) program, TCEQ's voluntary recognition and incentive program. Entities that wished to join at those levels were required to implement an EMS that met a TCEQ EMS standard. Further, entities were required to make environmental improvements that went beyond or outside regulatory requirements to receive the incentives authorized by the statute.

A review of the CTCW program in the fall of 2005 concluded that changes to how the EMS statute was being implemented could improve and increase participation in CTCW. In February 2006, executive management recommended that entities no longer be required to implement an EMS that met a TCEQ EMS standard. Instead, the TCEQ would recognize any established EMS framework that meets the statutory provisions of the Texas Water Code. Further, it was recommended that TCEQ staff no longer conduct EMS audits for approval into the program. Finally, the name of the CTCW was changed to Clean Texas. The purpose of this rulemaking is to incorporate these changes.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 90.2. Applicability and Eligibility.

The adopted amendment to subsections (e) and (f) would reflect the different compliance periods for each level of the Clean Texas program. Specifically, subsection (e) would state that an entity could not have any state or federal court orders for either two years or three years, depending on the level of the program for which they are applying. The adopted amendment to subsection (f) would extend the compliance period for criminal convictions regarding a site from three years to five years for all levels that require an EMS.

Section 90.30. Definitions.

The adopted amendment to §90.30 would add definitions for assessment, certified, and independent assessor, as well as renumber existing definitions accordingly. These definitions are necessary to reflect that the TCEQ will no longer conduct EMS audits, and that certified EMSs are necessary to receive regulatory incentives. Specific definitions would facilitate implementation, both for the agency and stakeholders.

Section 90.36. Evaluation of an Environmental Management System by the Executive Director.

The adopted amendment to §90.36 would provide a more streamlined assessment process. The adopted rules would specify that an EMS must be certified by an independent assessor, and would note the documentation necessary for eligibility review. The adopted amendments would also provide for verification visits for certain applications. The verification visits would not constitute EMS audits but would ensure that all entry requirements for participation in the Clean Texas program are satisfied.

Specifically, the adopted amendment to §90.36(a) would change eligibility requirements for regulatory incentives based on an EMS, including removing the option of the executive director performing the on-site audit. Also, the adopted amendment would alter terms according to changes in §90.30 and renumber existing paragraphs accordingly.

The adopted amendment to §90.36(b) would replace the existing subsection with a provision stating the executive director may conduct an on-site verification visit as necessary to assure compliance with the program. The adopted amendment to subsection (c)(3) would change "attainment of environmental-performance improvement goals or targets" to "reasonable progress toward attainment" of those goals or targets. The adopted amendment to subsection (e) would delete the existing subsection and re-letter the rest of the section accordingly.

The adopted amendment to subsections (h) and (i) deletes references to an evaluation by the executive director or a third-party auditor and substitutes requirements for the use of an independent assessor and requires that the results of the independent assessment be provided to the executive director.

The adopted amendment to subsection (j) delineates criteria by which the executive director will review the use of an independent assessor. Several criteria would be deleted, including references to third-party auditors performing and documenting work in a manner similar to that of the executive director. The adopted amendment clarifies that the assessor is independent of the implementation of the EMS. Credentials of the independent assessor remain a criterion, while specific educational requirements are stricken. Certification of the assessor is included in the meaning of "credentials" rather than being expressly stated in the rule. The method of audit review is revised to include a requirement to confirm performance of the EMS, while striking specific time requirements.

Section 90.40. Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System.

The adopted amendment to §90.40 would change the executive director's considerations when evaluating a request for regulatory incentives which modify state or federal requirements. The adopted amendments to §90.40(c) clarify that the executive director can consider the establishment of and progress toward

environmental performance improvement goals beyond or outside of regulatory requirements.

Section 90.42. Termination of Regulatory Incentives under an Environmental Management System.

The adopted amendment to §90.42(b) would make conforming changes to reflect the addition of terms in §90.30 and to allow independent assessors to conduct EMS audits in lieu of the executive director.

Section 90.44. Motion to Overturn.

The adopted amendment to §90.44 adds language whereby any person may file with the chief clerk a motion to overturn, not just those persons whose request for incentives has been denied or terminated. The adopted amendment makes the rules consistent with TCEQ rules that allow members of the public to file a motion to overturn.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Although this rule is adopted to protect the environment and reduce the risk to human health from environmental exposure, it would not be a major environmental rule because it would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Furthermore, the adopted rule does not meet any of the four applicability requirements listed in §2001.0225(a). The rule would not exceed a standard set by federal law because standards in the adopted rules are in accordance with the corresponding federal regulations, and they do not exceed an express requirement of state law. The adopted rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The rulemaking adopts a rule under specific state law (i.e., Texas Water Code, §5.131 and §5.127). Finally, this rulemaking is not being adopted on an emergency basis either to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

In accordance with Texas Government Code, §2007.043, the commission has prepared a takings impact assessment for the adopted rule. The following is a summary of that assessment. The specific purpose of the adopted rule is to enhance the TCEQ's EMS program. Promulgation and enforcement of the adopted rule would not affect private property mainly because it would not require anyone to do anything; everything it proposes is strictly voluntary. The adopted standards are not more stringent than existing standards. For these reasons, the adopted rule would not be a burden to private real property and would not constitute a taking under Texas Government Code, Chapter 2007. The adopted rule would not affect a landowner's rights in private real property.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rulemaking is subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. In accordance with 31 TAC §505.22, the commission has prepared a consistency determination for the adoption and has found that it is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). CMP policies focus on construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 *et seq*. Promulgation and enforcement of this rule would be consistent with the applicable CMP goals and policies because it would provide a framework that landfills could voluntarily use to help ensure and go beyond compliance with applicable laws. Thus, the rule would serve to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Changing the rules on environmental management systems will not impact new solid waste facilities and areal expansions of existing solid waste facilities. The commission has determined that the specific actions detailed in this section and earlier in this preamble under the sections explaining the adopted rule, concerning explanation of the adopted rule, final regulatory impact assessment, and takings impact assessment will comply with the goals and policies of the CMP. In addition, the adopted rule does not violate any applicable provisions of the CMP's stated goals and policies.

PUBLIC COMMENTS

The public comment period closed at 5:00 p.m. on October 9, 2006. The commission received comments from Baker Botts on behalf of the Texas Industry Project (TIP).

TIP suggested modifications to the proposed rules as stated in the RESPONSE TO COMMENTS section of this preamble.

RESPONSE TO COMMENTS

Section 90.44. Motion to Overturn.

TIP comments that the change to §90.44 which would allow any person to file a motion to overturn the executive director's decision on EMS and incentive approval is unnecessary and would, in all likelihood, result in significantly fewer companies deciding to participate in the program. First, TIP describes a motion to overturn filed by the public as analogous to public comment on a general permit, which TIP advocates should only be allowed during the development stage of EMS incentives applicable to all approved EMSs, not after a decision has been made on an individual EMS or EMS-related incentive request. Second, TIP states that companies would be less inclined to pursue TCEQ approval of their EMS if the public could request a motion to overturn the approval decision, thus undermining the reason for the proposed rule, to increase program participation.

Commission powers under Texas Water Code, §5.012 are broad enough ". . . to perform any acts whether specifically authorized or implied by code or law, necessary . . . the exercise of its jurisdiction. . .." It is within the breadth of commission powers to include a condition allowing the public to request a motion to overturn (MTO) under EMS programs. The permitting procedures for several media already afford the public the option of requesting an MTO (30 TAC Chapter 55).

The commission currently has the right to request an MTO on an EMS-approved entity; the public would only serve as an additional input to the ongoing monitoring of EMS-approved entities. Allowing the public to request an MTO on an EMS-approved entity therefore would not affect the EMS approval or constitute a disincentive to participate in the EMS program.

The commission responds to the second point raised by TIP, that companies would be less inclined to seek TCEQ approval for their EMS with a public right to file a motion to overturn the approval. If a company in the United States seeks the internationally-recognized ISO14001 EMS approval, it must use a registration body certified by ANSI-ASQ National Accreditation Board (ANAB). ANAB requires registration bodies to address complaints from any individual or company in a way analogous to a motion to overturn the executive director's decision. Since companies continue to pursue other EMS approvals with "motions to overturn", the TCEQ does not believe that including a right for the public to file a motion to overturn an EMS approval decision will negatively impact a company's desire to pursue EMS approval from the TCEQ.

TIP comments that the approval period for an EMS should be extended from three years to five so that incentives granted would be more valuable and fewer agency and participant resources would need to be expended to maintain EMS approval.

Industry standard third-party EMS certifications, such as ISO 14001, are on a three-year renewal cycle. The TCEQ is implementing EMS approval through the Clean Texas program, the top level of which is implemented in conjunction with the United States Environmental Protection Agency's (EPA's) National Environmental Performance Track, which has a three-year membership period. A five-year approval period would not coincide with the three-year audit cycle needed to maintain certification to many industry-recognized management system standards, resulting in additional expenses for additional independent assessments. The TCEQ has chosen to follow timing precedent set by recognized environmental management system certifying bodies and by the EPA.

SUBCHAPTER A. PURPOSE, APPLICABILITY, AND ELIGIBILITY

30 TAC §90.2

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and TWC, §5.105, which provide the commission with authority to adopt rules; and specific statutory authorization is derived from TWC, §5.131 and TWC, §5.127, which requires the commission to promulgate rules that establish a regulatory process that encourages the use of an EMS by regulated entities; and TWC, §5.122, which delegates to the executive director the commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration or other authorization, or approval. The adopted rules also relate to the incentives the commission will use to encourage the use of an EMS by those same regulated entities. Finally, this amendment is also adopted under Texas Government Code, §2001.006, which provides state agencies the authority to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The adopted amendment implements HB 2912 and HB 2997, 77th Legislature, 2001, which created the requirements for Environmental Management Systems under TWC, §5.131, Environmental Management Systems, and §5.127, Regulatory Flexibility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2007.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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SUBCHAPTER C. REGULATORY INCENTIVES FOR USING ENVIRONMENTAL MANAGEMENT SYSTEMS

30 TAC §§90.30, 90.36, 90.40, 90.42, 90.44

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and TWC, §5.105, which provide the commission with authority to adopt rules; and specific statutory authorization is derived from TWC, §5.131 and TWC, §5.127, which requires the commission to promulgate rules that establish a regulatory process that encourages the use of an EMS by regulated entities; and TWC, §5.122, which delegates to the executive director the commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration or other authorization, or approval. The adopted rules also relate to the incentives the commission will use to encourage the use of an EMS by those same regulated entities. Finally, these amendments are also adopted under Texas Government Code, §2001.006, which provides state agencies the authority to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The adopted amendments implement HB 2912 and HB 2997, 77th Legislature, 2001, which created the requirements for Environmental Management Systems under TWC, §5.131, Environmental Management Systems, and §5.127, Regulatory Flexibility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.32

The General Land Office (GLO) adopts amendments to §15.32 relating to Certification Status of Cameron County Dune Protection and Beach Access Plan (Plan) without changes to the proposed text as published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8963) and the text of the rule as amended will not be republished. The GLO adopts amendments to §15.32 to the certification status of the Plan, adopted on September 20, 1994, and previously amended on November 5, 1996, by order of the Commissioners' Court of Cameron County, Texas (County), and on November 5, 1996, to incorporate the Padre Shore Ltd. Final Master Plan Amendment. The County sought approval of amendments to its Plan adopted by order of the Commissioners' Court of the County on August 29, 2006, as Order No. 2006O8004 (2006 Plan Amendments). The adopted amendments to §15.32 delete language in subsection (b) concerning the 440-foot building line that has been eliminated by the County's 2006 Plan Amendments. The amendments to §15.32 also delete subsection (c) concerning the Padre Shore Ltd. Final Master Plan Amendment because most of the area governed by the Master Plan Amendment has been annexed by the Town of South Padre Island (Town). In addition, the Padre Island Shore Ltd. Final Master Plan had a ten-year term and expired on November 6, 2006. The portion of the Padre Shore Ltd development that is outside of the corporate limits of the Town of South Padre Island but within its extraterritorial jurisdiction will require individual dune protection permits issued by the County and beachfront construction certificates issued by the Town.

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61, "OBA" hereinafter), the Dune Protection Act (Texas Natural Resources Code, Chapter 63, "DPA" hereinafter), and the Beach/Dune Rules (31 TAC §§15.1 - 15.12 and §§15.21 - 15.36), a local government with jurisdiction over Gulf Coast beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification as provided in 31 TAC §15.3(o). The GLO reviews a local beach access and dune protection plan and, if appropriate, certifies that the plan is consistent with state law by adoption or amendment of a rule as authorized in Texas Natural Resources Code, §61.011(d)(5) and §61.015(b). The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO as provided in 31 TAC §15.3(o)(4).

A local jurisdiction proposing to adopt or amend beach user fees must submit a plan detailing the proposed action to the GLO for certification. The GLO reviews a local jurisdiction's beach user fee plan and, if appropriate, certifies by rule that the beach user fee plan is consistent with the Open Beaches Act and the Beach/Dune Rules as provided in Texas Natural Resources Code, §61.022(c) and 31 TAC §15.8(e).

A local government requesting certification of a plan or plan amendment that includes a variance of any requirement or prohibition in the GLO's Beach/Dune Rules must submit to the GLO a reasoned justification demonstrating how the variance provides equal or better protection of dunes, dune vegetation, and public access to and use of the public beach than is provided by the Beach/Dune Rules at 31 TAC §15.3(o)(6).

Cameron County is a coastal county that borders the Gulf of Mexico to the east, extending from the Rio Grande River, its southern boundary with Mexico, northward to the southernmost boundary of Willacy County on South Padre Island. South Padre Island is a barrier island, accessible by car from Cameron County and points west by the Queen Isabella Causeway on State Park Road 100. Boca Chica Beach is separated from South Padre Island by Brazos Santiago Pass, an inlet connecting the Laguna Madre to the Gulf of Mexico. Highway access to Boca Chica Beach is from Cameron County to the west via Boca Chica Highway, State Highway 4, removed from populated areas.

The Gulf beaches governed by the Plan are those unincorporated areas within the County including Boca Chica Beach and the following areas on South Padre Island: Isla Blanca Park, Andy Bowie Park, and the Gulf beaches north of the Town of South Padre Island. The Gulf beaches within the corporate limits of the Town of South Padre Island are governed by the Town of South Padre Island's Dune Protection and Beach Access Plan, certified at 31 TAC §15.30.

The 2006 Plan Amendments change the Plan by deleting Section III, Paragraph I - Building Line, in its entirety and by adopting language amending Section III, Paragraph G - Special Provisions Regarding Dunes and Section IV, Paragraph A, Development in Eroding Coastal Areas, to limit the use of concrete or other impervious surfaces within 200 feet from the line of vegetation as defined in the OBA. In addition, the Plan is modified to clearly identify locations in the area covered by the County's Plan where beach access is provided (Beach Access Points) that require conservation fees and those County Beach Access locations that permit free vehicular beach access. The modifications to the Plan also increase the beach conservation fee for passenger cars at Isla Blanca Park and Andy Bowie Park from $1.00 per day to $4.00 per day and increase the beach conservation fee for passenger cars at Beach Access Points 5 and 6 from $1.00 per day to $3.00 per day. The modifications to the Plan increase the beach conservation fee for quarterly passes from $7.50 to $15.00 and for annual passes from $20.00 to $39.00. Annual passes purchased in bulk quantities of 25 or more are available for $22.50. New beach conservation fees at Isla Blanca Park and Andy Bowie Park for buses up to 45 passengers will be $10 per day and $15.00 per day for buses with over 45 passengers. Finally, the County seeks to impose a beach conservation fee of $2.00 for motorcycles at Isla Blanca Park, Andy Bowie Park, and Beach Access Points 5 and 6. The 2006 Plan also identifies no-fee on-beach parking areas at Beach Access Points 7 (Boca Chica Beach), Beach Access Point 4, and Beach Access Point 6

(seasonal), as well as no-fee off-beach parking areas at Beach Access Points 3, 4, 5, and 7.

The GLO reviewed information provided by the County in support of its 2006 Plan Amendments and requests to change its beach user fee plan as required by 31 TAC §15.8(d), including the following: (1) revenue and expense information provided July 20, 2006, at a meeting in Austin, Texas between Cameron County Judge Gilberto Hinojosa and Texas Land Commissioner Jerry Patterson, including their respective staff members; (2) visitor counts and revenue and expense information in a proposed beach user fee plan provided by the Cameron County Parks System Director by E-mail dated August 3, 2006; (3) beach user fee reports required by 31 TAC §15.8(f) with revenue and expense information spanning 2002 through the County's third quarter of 2006 submitted by the Cameron County Parks System Director August 23, 2006; (4) revenue statistics for 90-day, day use, and annual passes received from the County by E-mail and facsimile on August 25, 2006; (5) responses received from the County on September 7, 2006 and September 11, 2006, to inquiries from the GLO concerning beach user fee reports and revenue statistics; and (6) the County's 2005 Parks System Audit submitted by the Cameron County Auditor on September 14, 2006. Based on the information provided by the County, the GLO has determined that the fee requested is reasonable in that it does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services, does not unfairly limit public use of and access to and from public beaches in any manner, and is certified as consistent with §15.8 of the Beach/Dune Rules and the Open Beaches Act.

The 2006 Plan also updates the description of Beach Access Points. A detailed designation of the beach accessways on Boca Chica Beach and the unincorporated areas of South Padre Island can be found in Section II of the 2006 Plan, with maps included as exhibits to the Plan. The 2006 Plan provides for restricted vehicular access with off-beach parking at Access Point 1 - Isla Blanca Park; Beach Access Point 2 - Andy Bowie Park; Beach Access Point 3 - (approximately 0.3 miles north of Andy Bowie Park); and Beach Access Point 4 (approximately one mile north of Andy Bowie Park). Vehicular access is provided at three existing beach access points: Beach Access Point 5 - E. K. Atwood Park (approximately 1.6 miles north of Andy Bowie Park); Beach Access Point 6 (approximately 4.5 miles north of Andy Bowie Park); and Beach Access Point 7 - Boca Chica Beach. Vehicular traffic is allowed on the beach between Beach Access Points 5 and 6.

A local government shall regulate pedestrian or vehicular beach access, traffic, and parking on the beach only in a manner that preserves or enhances existing public right to use and have access to and from the beach. According to the Beach/Dune Rules at 31 TAC §15.7(h)(1), if vehicular access is restricted to a stretch of beach, beach access and use is presumed to be preserved if these criteria are met: One parking space on or adjacent to the beach for every fifteen linear feet of beach restricted to vehicular traffic, ingress/egress ways no farther apart than 1/2 mile, and conspicuous signage explaining the nature and extent of vehicular controls, parking areas, and access points.

The distance between Beach Access Point 4 and Beach Access Point 5 is approximately 3,100 feet, which is 460 feet greater than the 1/2 mile criteria provided in 31 TAC §15.7(h)(1)(B). By letter from County Judge Gilberto Hinojosa, dated November 17, 2006, the County committed to enhancements to beach access and use, specifically on-beach parking at Access Point 5 immediately adjacent to the pedestrian beach, combined with off-beach parking at Beach Access Points 4 and 5 that exceeds the presumptive criteria (one parking space on or adjacent to the beach for every fifteen linear feet of beach restricted to vehicular traffic) by at least 88 parking spaces. Considering the fact that the distance between Beach Access Point 4 and Beach Access Point 5 is less than 0.1 miles greater than the presumptive 1/2 mile criteria and the enhancements to beach access and use committed in Judge Hinojosa's letter, the County may continue to restrict vehicular access to the area between Beach Access Point 4 and Beach Access Point 5. Accordingly, the GLO finds that beach access and use is preserved or enhanced and the variance from the presumptive 1/2 mile criteria is certified as consistent with the OBA and DPA, provided that the enhancements committed to by the County are maintained.

The 2006 Plan Amendments that change the Plan by deleting Section III, Paragraph I - Building Line, in its entirety are accompanied by changes adopting language amending Section III, Paragraph G - Special Provisions Regarding Dunes and Section IV, Paragraph A, Development in Eroding Coastal Areas, to limit the use of concrete or other impervious surfaces within 200 feet from the line of vegetation as defined in the OBA. The Building Line, also referred to as the 440-foot building line, prohibited the construction of a permanent structure or building east or seaward of a line 240 feet landward of the line of vegetation as determined in accordance with the OBA, running generally north and south and extending no further landward than 440 feet from mean low tide.

The GLO certifies the forgoing Plan Amendment as consistent with the OBA and the DPA since the deleted provisions concerning the 440-foot building line provided a stricter standard than required by the Beach/Dune Rules and is accompanied by the adoption of language to limit the use of concrete or other impervious surfaces within 200 feet from the line of vegetation, consistent with the provisions of the Beach/Dune Rules in §§15.4(c)(8), 15.5(b)(3), and 15.6(f)(3) of the Beach/Dune Rules. Section 15.4(c)(8) prohibits the construction of concrete slabs or other impervious surfaces outside the perimeter of a habitable structure whose area exceeds 5.0% of the footprint of the habitable structure within 200 feet landward of the natural line of vegetation. Section 15.5(b)(3) prohibits a local government from issuing a beachfront construction certificate if the construction includes a proposal to build a concrete slab or other impervious surface outside the perimeter of a habitable structure whose area exceeds 5.0% of the footprint of the habitable structure and is structurally attached to the building's foundation within 200 feet landward of the line of vegetation. Section 15.6(f)(3) applies to construction in eroding areas and provides that a local government may allow a permittee to alter or pave only the ground within the footprint of the habitable structure and only if the alteration or paving will be entirely undertaken, constructed, and located landward of 200 feet landward from the line of vegetation or landward of an eroding area boundary established in the local dune protection and beach access plan, whichever distance is greater. Most, if not all, of the unincorporated area of Cameron County north of the Town of South Padre Island that is covered by this Plan is in an eroding area with erosion rates at least 5 to 10 feet per year, as determined by the University of Texas, Bureau of Economic Geology.

The GLO's original certification of the County's 1994 Plan specifically provided that the 440-foot building line shall not be operative unless it is landward of the line of vegetation established as required in the OBA. In those areas where the 440-foot build-

ing line was landward of the line of vegetation, it provided a stricter standard than required by the Beach/Dune Rules. The 2006 Plan Amendments will allow the permitting of construction in some areas in which it was previously prohibited by the 440-foot building line. As recognized in the GLO's certification of the County's 1994 Plan, there are areas in the unincorporated area of Cameron County covered by this Plan where the line of vegetation (landward boundary of the public beach) may extend further landward than 440 feet from mean low tide. These areas are very dynamic and the line of vegetation (landward boundary of the public beach) is determined in accordance with the provisions of §61.016 and §61.017 of the OBA. The boundary of the public beach easement does not automatically revert to 200 feet from the line of mean low tide by the repeal of the 440-foot building line. Construction on the public beach or any larger area abutting on or contiguous to a public beach if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public is prohibited by §61.013 of the OBA and is not allowed by the County's 2006 Plan Amendments.

No comments were received from the public concerning the adopted rulemaking.

The justification for adoption of the adopted rulemaking is that the public will benefit from the increase in the beach user fees imposed by Cameron County, which will continue to fund and provide adequate and improved beach-related services to the public including the following: funding for ensuring safe use of and access to and from the public beach, including vehicular controls, management, and parking regulations; sanitation and litter control, including providing and servicing trash receptacles; law enforcement; providing public facilities such as restrooms; and installing signage explaining the nature and extent of vehicular controls, parking areas, and access points. In addition, the public will benefit from the elimination of the 440-foot building line from the County's Plan in that the change to the Plan removing limitations on construction that exceed state standards will promote economic development in the area adjacent to the beach within the County's jurisdiction, while maintaining regulations that are consistent with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules.

The adoption of the amendment to §15.32 concerning Certification Status of Cameron County Dune Protection and Beach Access Plan is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the CMP. The Land Office has reviewed the adopted rulemaking for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.26, relating to Policies for Construction in the Beach/Dune System, and §501.27, relating to Policies for Development in Coastal Hazard Areas. No comments on the consistency of the adopted rulemaking were received from the public or Council members. The adopted rulemaking is consistent with the Land Office's Beach/Dune Rules that the Council has determined to be consistent with the CMP. Consequently, the Land Office affirms its determination that the adopted actions are consistent with applicable CMP goals and policies.

The GLO has evaluated the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the adopted rulemaking implements legislative requirements in Texas Natural Resources Code, §§61.011, 61.015(b), and 61.022(c), which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law.

The amendments are adopted under the Texas Natural Resources Code, §§61.011, 61.015(b), 61.022(c), and 61.070 which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law. In addition, Texas Natural Resources Code, §63.121 provides the Texas General Land Office with authority to adopt rules for protection of critical dune areas.

Texas Natural Resources Code, §§61.011, 61.015, 61.022, 61.070, and 63.121 are affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Trace Finley
Policy Director
General Land Office
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER G. CIGARETTE TAX

34 TAC §3.101

The Comptroller of Public Accounts (comptroller) adopts an amendment to §3.101, concerning cigarette tax and stamping activities, without changes to the proposed text as published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10248).

This section is being amended pursuant to 79th Legislature, 2006, Third Called Session, House Bill 5. House Bill 5 increases the excise tax on cigarettes to $70.50 per thousand on cigarettes weighing three pounds or less per thousand. Subsection (a) is amended accordingly.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §154.021(b)(1).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Martin Cherry
General Counsel
Comptroller of Public Accounts
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SUBCHAPTER H. CIGAR AND TOBACCO TAX

34 TAC §3.121

The Comptroller of Public Accounts (comptroller) adopts an amendment to §3.121, concerning definitions, imposition of tax, permits, and reports, without changes to the proposed text as published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10249).

This section is being amended pursuant to 79th Legislature, Third Called Session, 2006, House Bill 5. House Bill 5 increases the excise tax on tobacco products other than cigars to 40 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal. Subsection (b)(1)(B) is amended accordingly.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §155.0211(b).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER BB. BATTERY SALES FEE

34 TAC §3.711

The Comptroller of Public Accounts adopts an amendment to §3.711, concerning collection and reporting requirements, without changes to the proposed text as published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10251).

The amendment adds a new (b)(2) to clarify that when a dealer fails to collect the battery sales fee from the purchaser of a lead-acid battery, the comptroller may collect the battery sales fee from the purchaser. Subsequent paragraphs are renumbered accordingly.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Health and Safety Code, §361.138(l), (m) and (n).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. MENTAL RETARDATION SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

40 TAC §§9.153, 9.154, 9.161, 9.164 - 9.168, 9.170, 9.174, 9.175

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§9.153, 9.154, 9.161, 9.164 - 9.168, 9.170, 9.174, and 9.175, in Chapter 9, Subchapter D, governing the Home and Community-based Services (HCS) Program. The amendment to §9.170 is adopted with changes to the proposed text published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7923). The amendments to §§9.153, 9.154, 9.161, 9.164 - 9.168, 9.174, and 9.175 are adopted without changes to the proposed text.

The amendments are adopted in part to allow an individual receiving services through the HCS Program to participate in the consumer directed services (CDS) option. Texas Government Code, §531.051, requires HHSC to develop a program in which the use of vouchers is available as a payment option for the delivery of certain services to persons with disabilities, including Medicaid services. Further, Texas Government Code, §531.052, established a CDS workgroup composed of representatives from various health and human services agencies to develop and implement the voucher payment program. In response to the requirement in §531.051, rules were adopted regarding vendor fiscal intermediary payments that applied to certain community care programs. House Bill 2292, 78th Texas Legislature, Regular Session, 2003, added §32.066 of the Texas Human Resources Code, which requires HHSC to establish a consumer directed services program in which individuals enrolled in Medicaid waiver programs direct the delivery of program services. In addition, the CDS workgroup required by §531.052 recommended the expansion of the CDS option to include the HCS and Texas Home Living (TxHmL) programs operated by DADS. Amendments that expand the CDS option to individuals in the TxHmL Program are adopted elsewhere in this issue of the *Texas Register*.

The CDS option is a service delivery option in which an individual or legally authorized representative (LAR) employs and retains service providers and directs the delivery of program services. An individual choosing to participate in the CDS option is supported by a consumer directed services agency (CDSA) chosen by the individual to provide financial management services, and, at the individual's request, support consultation. Support consultation services may also be provided by a contractor that is retained by the employer in the CDS option. The adopted rules specify the services available for self-direction, add support consultation and financial management to the array of HCS Program services, and specify provider and mental retardation authority (MRA) requirements, including those regarding informing an individual and LAR of the individual's right to participate in the CDS option and the procedures for recommending that an individual discontinue participation in the CDS option.

The amendments are also adopted to revise the notification procedures and time frames for applicants seeking to enroll in the HCS Program and to require an applicant who has indicated an interest in enrolling in the HCS Program to complete the necessary enrollment activities within specified time frames or be removed from the HCS Program waiting list.

Regarding the person-directed planning process that occurs during enrollment, the adopted rules clarify that the enrollment person-directed plan (PDP) addresses issues related to HCS enrollment, such as the services and supports an applicant will receive in the HCS Program and outcomes to be achieved by the applicant. The adopted rules also require an enrollment PDP to include a description of actions necessary to protect the health and welfare of the applicant upon initiation of services. This provision replaces the current rule provision that requires the PDP to include a description of actions and methods, projected completion dates, and the person or persons responsible for completion.

Finally, the amendments are adopted to amend the billing requirements in the HCS Program. The amendment to §9.170 permits DADS to require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices. The amendments to §9.170 and §9.174 also place current billing practices into rule, remove inconsistencies, replace references to the *HCS Service Definitions and Billing Guidelines* with references to the *HCS Program Billing Guidelines* or *HCS Program Service Definitions*, as appropriate, and provide a current website address for the *HCS Program Billing Guidelines* and *HCS Program Service Definitions*.

DADS received written comments from the Mission Road Developmental Center, J-MAG Enterprises, All the Little Things Count, Mosaic, the Private Providers Association of Texas (PPAT), and an HCS provider in the San Antonio area. A summary of the comments and the responses follow.

Comment: Four commenters stated that implementing the CDS option in the HCS Program creates confusion by duplicating existing processes. The commenters recommended that the rules be clarified to provide clear delineation of the responsibilities of the case manager, support advisor, individual, and CDSA.

Response: The commenters did not specify which existing HCS Program processes they believed were duplicated by the CDS option, but the agency directs the commenters to new Chapter 41, Consumer Directed Services Option, for a clear delineation of the responsibilities of all parties involved in the delivery of services under the CDS option. This chapter makes clear that the CDS option does not duplicate existing HCS Program processes. The rule language was not changed in response to the comment.

Comment: Two commenters stated that the CDS option does not have a system for oversight and control of direct service providers employed by individuals and relies heavily on the individual and family members to assume the role of a responsible employer.

Response: The agency agrees that the CDS option involves the individual and family members assuming the role of the responsible employer but disagrees with the commenters' statement that the CDS option does not have a system of oversight and control of direct service providers. The agency directs the commenters to new Chapter 41 for details about the oversight responsibilities regarding an employee of an individual or LAR, designated representative (DR), and a CDSA. In addition, the agency explains that Chapter 41, Subchapter H, states that DADS oversees the roles and responsibilities of the individual or LAR, DR,

and CDSA. The rule language was not changed in response to the comment.

Comment: Two commenters expressed opposition to implementing the CDS option in the HCS program, stating that the time and effort expended toward making this change would be better devoted to improving the HCS Program. The commenters believe that adding the CDS option will increase administrative costs for HCS providers, add an additional level of bureaucracy with the CDSA, and open the door for more corruption and poorer quality of service.

Response: The agency disagrees with the commenters' statements and responds that for individuals and family members who want greater choice in the selection of direct service providers, control over how services are delivered, and flexibility in setting wages and benefits of direct service providers, the CDS option represents a significant improvement to the HCS Program. The agency explains that during the past five years, DADS has successfully implemented the CDS option in four Medicaid waiver programs: Community Living Assistance and Support Services and Deaf-Blind Multiple Disabilities in 2001; Community Based Alternatives in 2003; and Medically Dependent Children Program in 2006. In addition, DADS has offered the CDS option in Consumer Managed Personal Assistance Services since 2001 and in Primary Home Care since 2002. House Bill 2292, 78th Texas Legislature, Regular Session, 2003, added §32.066 of the Texas Human Resources Code, which requires HHSC to establish a consumer directed services option in which individuals enrolled in Medicaid waiver programs direct the delivery of program services. In addition, the CDS workgroup required by Texas Government Code, §531.052, recommended the expansion of the CDS option to include the HCS and TxHmL programs operated by DADS. The rule language was not changed in response to the comment.

Comment: Six commenters disagreed with the assessment that the reduction in the case manager fee paid to a provider when an individual or LAR selects the CDS option will not impose an economic burden on providers. The commenters stated that the fiscal impact cannot be determined until the amount of the reduction is decided and the CDS rates are established. One of the commenters stated that any reduction in the already minimal HCS rates, particularly mid-year, will cause substantial budgeting difficulties for providers, and that sound business decisions cannot be made regarding the feasibility of providing CDSA services.

Response: The agency disagrees with the commenters' statement concerning the case management fee, and explains that the monthly rate paid on behalf of all individuals receiving HCS Program services includes reimbursement for case management, administrative, and other operating costs. The case management component of this monthly rate will not be lowered and will be paid to the HCS Program provider. Only a portion of the administrative and other operating costs associated with supported home living and respite services is being allocated to the budget of the individual who chooses the CDS option. This allocation occurs because the HCS Program provider will see a reduction in the direct service delivery, coordination, and oversight of the supported home living and respite services. The individual or LAR and not the HCS Program provider is the employer, and the individual or LAR manages the provision of these services in the CDS option. The agency further explains that the proposed preamble acknowledged that some providers may lose business as a result of individuals choosing the CDS option; however, the rules themselves do not establish requirements that create an economic burden for HCS Program providers. The rule language was not changed in response to the comment.

Comment: Two commenters stated that CDS has the potential to change the HCS system to a point where many providers will not be able to sustain financial viability. The added cost for administering the CDSAs will have to come from an already underfunded system that cannot afford this added burden.

Response: The agency disagrees with the commenters' statements that there is an added cost for administering the CDS option and noted that the commenters do not state the reasons why they believe that the CDS option has the potential to affect providers' financial viability or why the HCS program is underfunded. In any event, the agency's position is that the CDS option will not affect a provider's financial viability because the monthly rate paid to providers on behalf of the individuals to whom they provide services includes reimbursement for case management, administrative, and other operating costs. The case management component of this monthly rate will not be lowered and will be paid to the HCS Program provider. Only a portion of the administrative and other operating costs associated with supported home living and respite services are being allocated to the budget of the individual who chooses the CDS option. This allocation occurs because the HCS Program provider will see a reduction in the direct service delivery, coordination, and oversight of the supported home living and respite services. The individual or LAR and not the HCS Program provider is the employer, and the individual or LAR manages the provision of these services under the CDS option. The agency further explains that the proposed preamble acknowledged that some providers may lose business as a result of individuals choosing the CDS option; however, the rules themselves do not establish requirements that create an economic burden for HCS Program providers. The rule language was not changed in response to the comment.

Comment: One commenter requested a copy of the analysis DADS completed to determine that "there will be no adverse economic effect on small businesses" as a result of the administration and implementation of these rules. The commenter stated that experience with the former Mental Retardation Local Authority (MRLA) Program and the current Consolidated Waiver Program (CWP), in which provider responsibilities supposedly were reduced, is evidence that neither responsibilities nor costs will be reduced. The commenter stated that the economic impact on providers will be significant with a concomitant potential to destabilize the provider network.

Response: The agency responds that a formal analysis was not necessary because the rules do not create an adverse economic effect on small businesses or micro-businesses, although the proposed preamble acknowledged that some providers may lose business as a result of individuals choosing the CDS option. The rule language was not changed in response to the comment.

Comment: Five commenters stated that the CDS option will cause the quality of services delivered to drop dramatically and will significantly hamper the ability of the case manager to guarantee the health and safety of the individual. The commenters stated that the case manager cannot assure the individual's health and safety when the individual or a designated representative is the employer.

Response: The agency disagrees that the CDS option will cause a decrease in the quality of services provided. During the last five years, the CDS option has been implemented in six community-based programs and there is no evidence that the services provided through the CDS option are of lower quality than services provided through the traditional agency option. The CDS option does not alter a case manager's ability or requirement to monitor the delivery of waiver services and determine if services are meeting the individual's needs and are being provided as planned. The rule language was not changed in response to the comment.

Comment: One commenter questioned how an individual acting as an employer can be expected to deal with the many requirements placed by laws and regulations on a business entity, including dealing with taxes.

Response: The agency explains that new Chapter 41 provides that the CDSA has the responsibility to provide financial management services to assist the individual or LAR with business-related functions, including dealing with taxes. The rule language was not changed in response to the comment.

Comment: A commenter stated that the proposal implements another variation of the HCS Program without evaluation of the current program to determine strengths and weaknesses. The commenter recommended that DADS develop a long-term plan for people with developmental disabilities to achieve quality of services and maximize the efficiency of tax dollars spent.

Response: The agency disagrees with the commenter. The CDS workgroup required by Texas Government Code, §531.052, evaluated the effectiveness of the CDS option implemented in six community-based programs operated by the agency since 2001 and, based on such evaluation, recommended expansion of the CDS option to the HCS Program. Regarding the recommendation to develop a long-term plan, the agency responds that this comment is beyond the scope of these rules. The rule language was not changed in response to the comment.

Comment: One commenter expressed concern that many individuals will not understand the full scope of the CDS program and as a result will still rely on service providers or families to make decisions for them just as they do currently.

Response: The agency responds that the rules clearly state that it is the responsibility of the MRA to fully explain the CDS option to new enrollees. For individuals already enrolled in HCS, the responsibility for explaining CDS falls to the HCS Program provider, who is responsible for providing case management. The agency expects both the MRA and the program provider to take these responsibilities seriously, so that an individual understands the CDS option prior to choosing it as a service delivery option. In addition, as described in §41.109(e) and (g), an individual or LAR who chooses the CDS option but who is unable to complete the self-assessment required for participation must name a DR to assist with or perform the responsibilities of an employer. The rule language was not changed in response to the comment.

Comment: One commenter expressed concern about the feasibility of the support consultation services offered in the CDS option. The commenter asked whether the agency has developed safeguards to prevent the individual or LAR or the DR from pocketing the funds and expecting the HCS Program provider's case manager to assist with support consultation responsibilities.

Response: The agency responds that the commenter's concerns are addressed in new Chapter 41. In the CDS option, funds for support consultation services are dispensed by the CDSA directly to an eligible, certified support advisor following receipt of documentation of service delivery. The agency believes that sufficient safeguards are included in Chapter 41, Subchapter F, to prevent an individual or LAR or DR from fictitiously employing a support advisor. The rule language was not changed in response to the comment.

Comment: Concerning §9.170(a)(6)(B), (a)(8)(B), and (a)(8)(D), which describe the HCS billing requirements governing rejected claims and submission of corrected claims, a commenter requested the reinstatement of a provision that permitted a program provider 45 days after the date of notification by DADS of a rejected claim to submit a corrected claim. The commenter stated that providers remain concerned about receipt of a late notification from DADS rejecting a claim because the electronic systems now being used to accept or deny claims are not infallible.

Response: The agency agrees with the commenter's recommendation and has made the suggested change to §9.170(a)(6)(B), (a)(8)(B), and (a)(8)(D).

Comment: Concerning §9.170(a)(14)(B) and (a)(15)(A), a commenter questioned whether each overpayment found as a result of a DADS billing and payment review will always result in DADS recouping payment from the program provider and also requiring the program provider to develop and submit a corrective action plan that improves billing practices.

The commenter also recommended that the agency include general criteria in rules to provide clarity as to what type of findings will result in the need for development of a corrective action plan. The commenter further recommended that the agency include general criteria for an "accepted" corrective action plan.

Response: The agency agrees with the commenter's recommendations and has added general criteria to §9.170(a)(14)(B), requiring a corrective action plan, and language to §9.170(a)(15)(A), regarding the content of a corrective action plan.

Comment: Concerning §9.170(a)(16), a commenter recommended that time frames be included for the agency to follow in completing its responsibilities when a provider is required to submit a corrective action plan.

Response: The agency agrees with the commenter's recommendation and has made a change to §9.170(a)(16) stating that DADS notifies a program provider if a corrective action plan is approved or if changes to the plan are required within 30 calendar days of the corrective action plan being received by DADS.

Comment: Concerning §9.170(a)(18)(A) and (B), which specifies the action DADS may impose if a provider does not comply with requirements for a corrective action plan, a commenter described the provisions as vague. The commenter further stated that the provisions allude to consequences of greater and lesser severity without providing any objective criteria about when one remedy or another will be imposed. The commenter explained that this vagueness leaves providers vulnerable to sanctions being imposed at no fault of their own, and recommended that DADS: (1) provide a definite time before vendor hold is imposed, (2) provide clear criteria for when contract termination will occur, and (3) incorporate time frames to which DADS must adhere.

Response: The agency agrees with the commenter's recommendation and has amended §9.170(a)(18) and added a new paragraph §9.170(a)(19) to clarify the circumstances under which DADS may impose a vendor hold or terminate a program provider agreement if a program provider does not submit the corrective action plan or complete a corrective action in accordance with such a plan.

Comment: A commenter recommended that the agency aggressively pursue ongoing cost analysis of the CDS option across all programs to include HCS Program and evaluate consumer satisfaction with CDS in the HCS Program following implementation.

Response The agency responds that HHSC and the CDS workgroup required by Texas Government Code, §531.052, will continue to determine the type and frequency of any analysis of the CDS option. The rule language was not changed in response to the comment.

Comment: One commenter asked who provides the individual or DR with the training to be able to train the direct service provider.

Response: The agency responds that an individual or LAR may choose to receive support consultation as an optional CDS service provided by a support adviser, as described in Chapter 41. Support consultation is a service that assists and trains the individual or LAR in meeting the required employer responsibilities of the CDS option, including training the employee and ensuring successful delivery of program services. The rule language was not changed in response to the comment.

Comment: Some commenters expressed concern that, if the CDS option is available in the HCS Program, a case manager's duties will be increased to assist an individual or LAR by acting as the employer or the DR while the reimbursement rate is cut in order to fund CDS.

Response: The agency disagrees with the commenters' statements that the case manager's duties will be increased to assist the individual or LAR as an employer and that reimbursement rates have been reduced. The only additional function of a case manager as a result of the CDS option is the requirement to explain and offer the CDS option to individuals annually. The monthly rate that is paid on behalf of all individuals in the HCS Program includes reimbursement for case management, administrative, and other operating costs. The case management component of this monthly rate will not be lowered and will be paid to the HCS Program provider. Only a portion of the administrative and other operating costs associated with supported home living and respite services are being allocated to the individual's CDS budget. This allocation occurs because the HCS Program provider will see a reduction in the direct service delivery, coordination, and oversight of the supported home living and respite services. The individual or LAR, and not the HCS Program provider, is the employer and the individual or LAR manages the provision of these services under CDS. The rule language was not changed in response to the comment.

Comment: Three commenters expressed displeasure that CDS rates have not been established. They stated that providers cannot commit to providing a service without knowing if they will be adequately compensated.

Response: The agency responds that HHSC is responsible for setting rates for the CDS option and is developing a methodology for establishing those rates. The rule language was not changed in response to the comment.

Comment: A commenter recommended that the agency subject all forms, related tools, and guidance materials for use by persons choosing the CDS option to the same formal public comment process established for rules. The commenter further recommended that the forms, related tools, and guidance materials include legal citations as recommended in HHSC's Rider 44 *Mental Retardation Services Report*, dated February 2005.

Response: The agency responds that although it may not subject all forms, related tools, and guidance materials used in the CDS option to the public comment process used for rules, it will continue to consider stakeholder input when developing forms and materials. Regarding other forms and manuals, the agency responds that this comment is beyond the scope of these rules but will take the commenter's proposal under consideration. The rule language was not changed in response to the comment.

Comment: One commenter stated that program providers will be held accountable for services an individual or LAR has elected to receive through the CDS option and will be "hit with deficiencies" by surveyors.

Response: The agency disagrees with the commenter's assessment and responds that Chapter 41 places responsibility on the individual or LAR for services delivered through the CDS option. A program provider will not be cited for deficiencies regarding services delivered through the CDS option.

Comment: A commenter indicated that it appears that the CDS option is a duplication of HCS foster/companion care.

Response: The agency responds that by rule the CDS option is available only to individuals who live in their own home or the home of the individual's family. The option is not available to individuals residing in a foster care setting. The rule language was not changed in response to the comment.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code, 531.051, which requires the Health and Human Services Commission to develop a program in which the use of vouchers is available as a payment option for the delivery of certain services to persons with disabilities, including Medicaid services; and Texas Human Resources Code, §32.066 which requires HHSC to establish a consumer-directed services program in which individuals enrolled in Medicaid waiver programs direct the delivery of program services.

§9.170. Reimbursement.

(a) Program provider reimbursement.

(1) DADS pays the program provider for service components as follows:

(A) Case management, supported home living, counseling and therapies, nursing, respite, and supported employment are paid for in accordance with the reimbursement rate for the specific service component.

(B) Foster/companion care, residential support, supervised living, and day habilitation are paid for in accordance with the individual's LON and the reimbursement rate for the specific service component.

(C) Adaptive aids, minor home modifications, and dental treatment are paid for based on the actual cost of the item.

(2) The program provider must accept DADS' payment for a service component as payment in full for the service component.

(3) If the program provider disagrees with the enrollment date of an individual as determined by DADS, the program provider must notify DADS in writing of its disagreement, including the reasons for the disagreement, within 180 days after the end of the month in which the program provider receives the enrollment letter. DADS reviews the information submitted by the program provider and notifies the program provider of its determination regarding the individual's enrollment date.

(4) The program provider must prepare and submit claims for service components in accordance with this subchapter, the HCS Program Provider Agreement, and the *HCS Program Billing Guidelines*, which are available at http://www.dads.state.tx.us/business/mental_retardation/hcs/index.html.

(5) The program provider must:

(A) submit a claim, electronically, to DADS for day habilitation, foster/companion care, supported home living, residential support, supervised living, respite, supported employment, case management, counseling and therapies, and nursing; and

(B) obtain an authorization for payment from DADS, in accordance with the *HCS Program Billing Guidelines* and paragraph (8) of this subsection, and submit a claim, electronically, to DADS for adaptive aids, minor home modifications, and dental treatment.

(6) For a service component listed in paragraph (5)(A) of this subsection, the program provider must:

(A) submit a claim to DADS by the latest of the following dates:

(i) within 95 calendar days after the end of the month in which the service component was provided;

(ii) within 45 calendar days after the date of the enrollment approval letter issued by DADS; or

(iii) within 95 calendar days after the end of the month in which the program provider receives a dated response denying payment for the service component from a source other than the HCS Program to a correctly submitted request to that source for payment for the service component; and

(B) if DADS rejects a submitted claim, submit a corrected claim by one of the following dates, whichever is later:

(i) the 180th calendar day after the end of the month in which the service component or subcomponent was provided; or

(ii) the 45th calendar day after the date of the notification that the claim has been rejected.

(7) If an individual is temporarily or permanently discharged from the HCS Program:

(A) the program provider may submit a claim for day habilitation, supported home living, respite, supported employment, case management, counseling and therapies, and nursing for the day of the individual's discharge; and

(B) the program provider must not submit a claim for foster/companion care, residential support, or supervised living for the day of the individual's discharge.

(8) For a service component listed in paragraph (5)(B) of this subsection, the program provider must:

(A) submit a request for authorization for payment to DADS within 95 days after the end of the month in which:

(i) the individual received the adaptive aid or dental treatment; or

(ii) the minor home modification was completed;

(B) if DADS rejects a request for authorization for payment, submit a corrected request for authorization for payment by one of the following dates, whichever is later:

(i) the 180th calendar day after the end of the month in which:

(I) the individual received the adaptive aid or dental treatment; or

(II) the minor home modification was completed; or

(ii) the 45th calendar day after the date of the notification that the authorization for payment has been rejected;

(C) after obtaining authorization for payment from DADS, submit a claim within 45 calendar days after authorization for payment is given by DADS; and

(D) if DADS rejects a submitted claim, submit a corrected claim by one of the following dates, whichever is later:

(i) the 180th calendar day after the end of the month in which:

(I) the individual received the adaptive aid or dental treatment; or

(II) the minor home modification was completed; or

(ii) the 45th calendar day after the date of the notification that the claim has been rejected.

(9) If the program provider submits a claim for an adaptive aid or dental treatment, the program provider must submit documentation that sources of payment other than the HCS Program for which the individual may be eligible, including Medicare, Medicaid (such as Texas Health Steps and Home Health), DARS, the public school system, and private insurance, denied the submitted claim. Such documentation includes evidence that a proper, complete, and timely request for payment was made to the other payment source and that payment was not made.

(10) If the program provider submits a claim for an adaptive aid that costs $500 or more or for a minor home modification that costs $1000 or more, the program provider must submit an individualized assessment conducted by a professional qualified to assess whether the aid or modification is necessary and appropriate to address the individual's specific needs.

(11) DADS does not pay the program provider for a service component or recoups any payments made to the program provider for a service component if:

(A) the individual receiving the service component is, at the time the service component was provided, ineligible for the HCS

program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/MR;

(B) the service component is provided to an individual during a period of time for which the program provider does not provide a signed and dated IPC for the individual;

(C) the service component is not included on the signed and dated IPC of the individual in effect at the time the service component was provided;

(D) the service component provided does not meet the service definition or is not provided in accordance with the *HCS Program Billing Guidelines*;

(E) the program provider provides the supervised living or residential support service component in a residence in which four individuals or other person receiving similar services live without DADS' approval as required in §9.188 of this subchapter (relating to DADS' Approval of Residences);

(F) the service component is not documented in accordance with the *HCS Program Billing Guidelines*;

(G) the claim for the service component is not prepared and submitted in accordance with the *HCS Program Billing Guidelines*;

(H) an individualized assessment as required by paragraph (10) of this subsection is not submitted by the program provider;

(I) DADS determines that the service component would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper, complete, and timely request for payment for the service component;

(J) the service component is provided during a period of time for which the program provider does not provide a signed and dated MR/RC Assessment for the individual;

(K) the service component is provided during a period of time for which the individual did not have an LOC determination;

(L) the service component is provided by a service provider who does not meet the qualifications to provide the service component as delineated in the *HCS Program Billing Guidelines*;

(M) the service component is not provided in accordance with a signed and dated IPC meeting the requirements set forth in §9.157 of this subchapter (relating to Individual Plan of Care);

(N) the service component is not provided in accordance with the plan for services described in the individual's ISP, staffing summary or enrollment PDP;

(O) the service component of foster/companion care, residential support, or supervised living is provided on the day of the individual's temporary or permanent discharge from the HCS Program;

(P) the service component is provided before the individual's enrollment date into the HCS Program; or

(Q) the service component was paid at an incorrect LON because the MR/RC Assessment electronically transmitted to DADS does not contain information identical to information on the signed MR/RC Assessment.

(12) The program provider must keep any records necessary to disclose the extent of the service components provided by the program provider and, on request, provide DADS any such records and any information regarding claims filed by the program provider.

(13) The program provider must refund to DADS any overpayment made to the program provider within 60 days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from DADS, whichever is earlier.

(14) DADS conducts billing and payment reviews to monitor a program provider's compliance with this subchapter and the *HCS Program Billing Guidelines*. DADS conducts such reviews in accordance with the Billing and Payment Review Protocol set forth in the *HCS Program Billing Guidelines*. As a result of a billing and payment review, DADS may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified claims, require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices.

(15) A corrective action plan required by DADS in accordance with paragraph (14)(B) of this subsection must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to DADS within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by DADS before implementation.

(16) Within 30 calendar days of the corrective action plan being received by DADS, DADS notifies the program provider if a corrective action plan is approved or if changes to the plan are required.

(17) If DADS requires a program provider to develop and submit a corrective action plan in accordance with paragraph (14)(B) of this subsection and the program provider requests an administrative hearing for the recoupment in accordance with §9.180 of this subchapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. DADS notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(18) If the program provider does not submit the corrective action plan or complete the required corrective action within the time frames described in paragraph (15) of this subsection, DADS may impose a vendor hold on payments due to the program provider under the program provider agreement until the program provider takes the corrective action.

(19) If the program provider does not submit the corrective action plan or complete the required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (18) of this subsection, DADS may terminate the program provider agreement.

(b) CDSA reimbursement. For an individual participating in CDS, DADS pays the CDSA for the following service components in accordance with the reimbursement rate established by HHSC:

(1) financial management services;

(2) support consultation, if requested by the individual or LAR;

(3) supported home living, if the individual or LAR chooses it to be provided through CDS; and

(4) respite, if the individual or LAR chooses it to be provided through CDS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2007.

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SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§9.553 - 9.563, 9.567, 9.568, 9.570, 9.571, 9.573 - 9.580, 9.582, and 9.583; new §9.566; and the repeal of §§9.565, 9.566, 9.584, and 9.585, in Chapter 9, Subchapter N, governing the Texas Home Living (TxHmL) Program. The amendments to §§9.579, 9.580, and 9.583 are adopted with changes to the proposed text published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7938). The amendments to §§9.553 - 9.563, 9.567, 9.568, 9.570, 9.571, 9.573 - 9.578, and 9.582; new §9.566; and the repeal of §§9.565, 9.566, 9.584, and 9.585 are adopted without changes to the proposed text.

The amendments are adopted in part to allow an individual receiving services through the TxHmL Program to participate in the consumer directed services (CDS) option. Texas Government Code, §531.051, requires HHSC to develop a program in which the use of vouchers is available as a payment option for the delivery of certain services to persons with disabilities, including Medicaid services. Further, Texas Government Code, §531.052, established a CDS workgroup composed of representatives from various health and human services agencies to develop and implement the voucher payment program. In response to the requirement in §531.051, rules were adopted regarding vendor fiscal intermediary payments that applied to certain community care programs. House Bill 2292, 78th Texas Legislature, Regular Session, 2003, added §32.066 to the Texas Human Resources Code, which requires HHSC to establish a consumer directed services program in which individuals enrolled in Medicaid waiver programs direct the delivery of program services. In addition, the CDS workgroup required by Texas Government Code, §531.052, recommended the expansion of the CDS option to include the Home and Community-based Services (HCS) and TxHmL programs operated by DADS. Amendments that expand the CDS option to individuals in the HCS Program are adopted elsewhere in this issue of the *Texas Register.*

The CDS option is a service delivery option in which an individual or legally authorized representative (LAR) employs and retains service providers and directs the delivery of program services. An individual choosing to participate in the CDS option is supported by a consumer directed services agency (CDSA) chosen by the individual to provide financial management services, and, at the individual's request, support consultation services. Support consultation services can also be provided by a contractor that is retained by the employer in the CDS option. The adopted rules specify the services available for self-direction, add support consultation and financial management to the array of TxHmL Program services, and specify provider and mental retardation authority (MRA) requirements, including those regarding informing an individual and LAR of the individual's right to participate in the CDS option, and the procedures for recommending that an individual discontinue participation in the CDS option.

The amendments, new section, and repeal are also adopted to clarify and amend the procedures for notifying an applicant of a program vacancy to include time frames for enrollment activities and to specify the circumstances under which an MRA withdraws an offer of a program vacancy. Historically, the TxHmL Program rules have not included enrollment time frames for an applicant seeking program enrollment, which has adversely affected an MRA's ability to complete enrollments and offer program vacancies. The adopted rules also delete the actual number of geographic areas and waiver contract areas and add the website address listing the counties in the geographic and waiver contract areas.

The amendments are also adopted to update terminology and agency names, correct rule cross-references to ensure that the rule reflects changes resulting from the consolidation of health and human services agencies in 2004, and update the sections to make them consistent with other DADS rules.

The adoption reorders and renumbers §9.580 and §9.583; however, no substantive change has been made to the rule content. The reordering and renumbering were necessary to retain the numbering system of certification principles in the TxHmL rule, because that numbering system corresponds to the internal data collection systems used by the survey and certification staff for evidentiary reporting to the Centers for Medicare and Medicaid Services. Section 9.579(d)(2)(B) was changed to update a reference based on these changes.

DADS received written comments from the Mission Road Developmental Center, J-MAG Enterprises, All the Little Things Count, Mosaic, and the Private Providers Association of Texas (PPAT). A summary of the comments and the responses follow.

Comment: Four commenters stated that implementing the CDS option in the TxHmL Program creates confusion by duplicating existing processes. The commenters recommended that the rules be clarified to provide clear delineation of the responsibilities of the case manager, support advisor, individual, and CDSA.

Response: The commenters did not specify which existing TxHmL Program processes they believed were duplicated by the CDS option, but the agency directs the commenters to new Chapter 41, Consumer Directed Services Option, for a clear delineation of the responsibilities of all parties involved in the delivery of services under the CDS option. This chapter makes clear that the CDS option does not duplicate existing TxHmL Program processes. The rule language was not changed in response to the comment.

Comment: Two commenters expressed opposition to implementing the CDS option in the TxHmL program, stating that the time and effort expended toward making this change would be better devoted to improving the TxHmL Program. The commenters stated adding the CDS option will increase administrative costs for TxHmL providers, add an additional level of bureaucracy with the CDSA, and open the door for more corruption and poorer quality of service.

Response: The agency disagrees with the commenters' statements and responds that for individuals and family members who want greater choice in the selection of direct service providers, control over how services are delivered, and flexibility in setting wages and benefits of direct service providers, the CDS option represents a significant improvement to the TxHmL Program. The agency explains that during the past five years, the agency has successfully implemented the CDS option in four Medicaid waiver programs: Community Living Assistance and Support Services and Deaf-Blind Multiple Disabilities in 2001; Community Based Alternatives in 2003; and Medically Dependent Children Program in 2006. In addition, the agency has offered the CDS option in Consumer Managed Personal Assistance Services since 2001 and in Primary Home Care since 2002. House Bill 2292, 78th Texas Legislature, Regular Session, 2003, added §32.066 to the Texas Human Resources Code, which requires HHSC to establish a consumer directed services option in which individuals enrolled in Medicaid waiver programs direct the delivery of program services. In addition, the CDS workgroup required by Texas Government Code, §531.052, recommended the expansion of the CDS option to include the HCS and TxHmL programs operated by the agency. The rule language was not changed in response to the comment.

Comment: A commenter recommended that the agency aggressively pursue ongoing cost analysis of the CDS option across all programs to include the TxHmL Program and evaluate consumer satisfaction with CDS in the TxHmL Program following implementation.

Response: The agency responds that HHSC and the CDS workgroup required by Texas Government Code, §531.052, will continue to determine the type and frequency of any analysis of the CDS option. The rule language was not changed in response to the comment.

40 TAC §§9.553 - 9.563, 9.566 - 9.568, 9.570, 9.571, 9.573 - 9.580, 9.582, 9.583

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code, §531.051, which requires the Health and Human Services Commission to develop a program in which the use of vouchers is available as a payment option for the delivery of certain services to persons with disabilities, including Medicaid services; and Texas Human Resources Code, §32.066 which requires HHSC to establish a consumer-directed services program in which individuals enrolled in Medicaid waiver programs direct the delivery of program services.

§9.579. Certification Principles: Qualified Personnel.

(a) The program provider must ensure the continuous availability of trained and qualified employees and contractors to provide the service components in an individual's IPC.

(b) The program provider must comply with applicable laws and regulations to ensure that:

(1) its operations meet necessary requirements; and

(2) its employees or contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(c) The program provider must employ or contract with a service provider of the individual's or LAR's choice if that service provider:

(1) is qualified to provide the service component;

(2) provides the service within the direct services portion of the applicable TxHmL Program rate; and

(3) contracts with or is employed by the program provider.

(d) The program provider must implement and maintain a plan for initial and periodic training of personnel that assures personnel are:

(1) trained and qualified to deliver services as required by the current needs and characteristics of the individual to whom they deliver services;

(2) knowledgeable of:

(A) acts that constitute abuse, neglect, or exploitation of an individual, as defined in Chapter 711, Subchapter A of this title (relating to Introduction);

(B) the requirement to report acts of abuse, neglect, or exploitation, or suspicion of such acts, to DFPS in accordance with §9.580(e) of this subchapter (relating to Certification Principles: Quality Assurance); and

(C) methods to prevent the occurrence of abuse, neglect, and exploitation.

(e) The program provider must implement and maintain personnel practices that safeguard an individual against infectious and communicable diseases.

(f) The program provider must prevent:

(1) conflicts of interest between program provider personnel and an individual;

(2) financial impropriety toward an individual;

(3) abuse, neglect, or exploitation of an individual; and

(4) threats of harm or danger toward an individual's possessions.

(g) The program provider must employ or contract with a person who has a minimum of three years work experience in planning and providing direct services to people with mental retardation or other developmental disabilities, as verified by a written professional reference, to oversee the provision of direct services to an individual.

(h) The program provider must ensure that the provider of community support, day habilitation, employment assistance, supported employment, or respite is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) written competency-based assessment of the ability to document service delivery and observations of an individual to be served; and

(B) at least three personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for an individual being served.

(i) The program provider must ensure that the provider of community support, day habilitation, employment assistance, supported employment, or respite provides transportation in accordance with applicable state laws.

(j) The program provider must ensure that at least one of the following service components is provided by a person who is employed by, not contracting with, the program provider:

(1) community support;

(2) day habilitation;

(3) supported employment; or

(4) respite.

(k) The program provider must ensure that dental treatment is provided by a dentist currently licensed by the Texas State Board of Dental Examiners.

(l) The program provider must ensure that nursing is provided by a nurse who is currently licensed as a registered nurse or as a vocational nurse by the Board of Nurse Examiners for the State of Texas.

(m) The program provider must ensure that adaptive aids meet applicable standards of manufacture, design, and installation.

(n) The program provider must ensure that the provider of behavioral support is currently:

(1) licensed as a psychologist by the Texas State Board of Examiners of Psychologists;

(2) licensed as a psychological associate by the Texas State Board of Examiners of Psychologists and working under the supervision of a licensed psychologist;

(3) licensed as a psychological associate by the Texas State Board of Examiners of Psychologists or certified as a DADS-certified psychologist in accordance with §5.161 of this title (relating to TDMHMR-Certified Psychologist) and working in a public agency; or

(4) certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.

(o) The program provider must ensure that minor home modifications are delivered by contractors who provide the service in accordance with state and local building codes and other applicable regulations.

(p) The program provider must ensure that a provider of specialized therapies is licensed by the appropriate State of Texas licensing authority for the specific therapeutic service provided by the provider.

(q) The program provider must comply with THSC, Chapters 250 and 253, including taking the following action regarding certain applicants, employees, and contractors:

(1) obtain criminal history record information that relates to the applicant, employee, or contractor and refrain from employing or contracting with, or immediately discharge, a person who has been convicted of an offense that bars employment under THSC, §250.006, or an offense that the program provider determines is a contraindication to the person's employment or contract with the program provider;

(2) search the Nurse Aide Registry maintained by DADS in accordance with THSC, Chapter 250, and refrain from employing or contracting with, or immediately discharge, a person who is designated in the registry as having abused, neglected, or mistreated a consumer of a facility or has misappropriated a consumer's property; and

(3) search the Employee Misconduct Registry maintained by DADS in accordance with THSC, Chapter 253, and refrain from employing or contracting with, or immediately discharge, a person who is designated in the registry as having abused, neglected, or exploited a consumer or has misappropriated a consumer's property.

§9.580. Certification Principles: Quality Assurance.

(a) The program provider must:

(1) assist the individual or LAR in understanding the requirements for participation in the TxHmL Program and include the individual or LAR in planning service provision and any changes to the plan for service provision if changes become necessary;

(2) assist and cooperate with the individual's or LAR's request to transfer to another program provider;

(3) assist the individual to access public accommodations or services available to all citizens;

(4) assist the individual to manage the individual's financial affairs upon documentation of the individual's or LAR's written request for such assistance;

(5) ensure that any restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(6) inform the individual or LAR about the individual's health, mental condition, and related progress;

(7) inform the individual or LAR of the name and qualifications of any person serving the individual and the option to choose among various available service providers;

(8) provide the individual or LAR access to TxHmL Program records, including, if applicable, financial records maintained on the individual's behalf, about the individual and the delivery of services by the program provider to the individual;

(9) assist the individual to communicate by phone or by mail during the provision of TxHmL Program services unless the service planning team has agreed to limit the individual's access to communicating by phone or by mail;

(10) assist the individual, as specified in the individual's PDP, to attend religious activities as chosen by the individual or LAR;

(11) ensure the individual is free from unnecessary restraints during the provision of TxHmL Program services;

(12) regularly inform the individual or LAR about the individual's or program provider's progress or lack of progress made in the implementation of the PDP;

(13) receive and act on complaints about the program services provided by the program provider;

(14) ensure that the individual is free from abuse, neglect, or exploitation by program provider personnel;

(15) provide active, individualized assistance to the individual or LAR in exercising the individual's rights and exercising self-advocacy, including:

(A) making complaints;

(B) registering to vote;

(C) obtaining citizenship information and education;

(D) obtaining advocacy services; and

(E) obtaining information regarding legal guardianship;

(16) provide the individual privacy during treatment and care of personal needs;

(17) include the individual's LAR in decisions involving the planning and provision of TxHmL Program services;

(18) inform the individual or LAR of the process for reporting a complaint to DADS or the MRA when the program provider's resolution of a complaint is unsatisfactory to the individual or LAR, including the DADS Office of Consumer Rights and Services telephone number to initiate complaints (1-800-458-9858) or the MRA telephone number to initiate complaints;

(19) inform the individual or LAR, orally and in writing, of the requirements described in paragraphs (1) - (18) of this subsection:

(A) when the individual is enrolled in the program provider's program;

(B) if the requirements described in paragraphs (1) - (18) of this subsection are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes;

(20) obtain an acknowledgement stating that the information described in paragraph (19) of this subsection was provided to the individual or LAR and that is signed by:

(A) the individual or LAR;

(B) the program provider staff person providing such information; and

(C) a third-party witness; and

(21) notify the individual's service coordinator of an individual's or LAR's expressed interest in CDS and document such notification.

(b) The program provider must make available all records, reports, and other information related to the delivery of TxHmL Program services as requested by DADS, other authorized agencies, or CMS and deliver such items, as requested, to a specified location.

(c) At least annually, the program provider must conduct a satisfaction survey of individuals, their families, and LARs, and take action regarding any areas of dissatisfaction.

(d) The program provider must publicize and make available a process for receiving complaints, and maintain a record of verifiable resolutions of complaints received from:

(1) individuals, their families, or LARs;

(2) the MRA;

(3) the program provider's personnel or service providers; and

(4) the general public.

(e) The program provider must ensure that:

(1) the individual and the LAR are informed of how to report allegations of abuse, neglect, or exploitation to DFPS and are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(2) all program provider personnel:

(A) are instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited; and

(B) are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(C) report suspected abuse, neglect or exploitation as instructed.

(f) Upon suspicion that an individual has been or is being abused, neglected, or exploited or notification of an allegation of abuse, neglect or exploitation, the program provider must take necessary actions to secure the safety of the alleged victim, including:

(1) obtaining immediate and on-going medical and other appropriate supports for the alleged victim, as necessary;

(2) restricting access by the alleged perpetrator of the abuse, neglect, or exploitation to the alleged victim or other individuals pending investigation of the allegation, when an alleged perpetrator is an employee or contractor of the program provider; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the alleged victim, the alleged victim's LAR, and the MRA of the allegation report and the actions that have been or will be taken.

(g) The program provider personnel must cooperate with the DFPS investigation of an allegation of abuse, neglect, or exploitation, including:

(1) providing complete access to all TxHmL Program service sites owned, operated, or controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance with DFPS instructions.

(h) The program provider must:

(1) report the program provider's response to the finding of a DFPS investigation of abuse, neglect, or exploitation to DADS in accordance with DADS procedures within 14 calendar days of the program provider's receipt of the investigation findings;

(2) promptly, but not later than five calendar days from the program provider's receipt of the DFPS investigation finding, notify the alleged victim or LAR of:

(A) the investigation finding;

(B) the corrective action taken by the program provider if DFPS confirms that abuse, neglect, or exploitation occurred;

(C) the process to appeal the investigation finding as described in Chapter 711, Subchapter M of this title (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Advocacy, Incorporated); and

(D) the process for requesting a copy of the investigative report from the program provider; and

(3) upon request of the alleged victim or LAR, provide to the alleged victim or LAR a copy of the DFPS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the alleged victim.

(i) If the DFPS investigation confirms that abuse, neglect, or exploitation by program provider personnel occurred, the program provider must take appropriate action to prevent the recurrence of abuse, neglect or exploitation including, when warranted, disciplinary action against or termination of the employment of program provider personnel confirmed by the DFPS investigation to have committed abuse, neglect, or exploitation.

(j) In all respite facilities, the program provider must post in a conspicuous location:

(1) the name, address, and telephone number of the program provider;

(2) the effective date of the program provider agreement; and

(3) the name of the legal entity named on the program provider agreement.

(k) At least quarterly, the program provider must review incidents of confirmed abuse, neglect, or exploitation, complaints, temporary and permanent discharges, transfers, and unusual incidents to identify program operation modifications that will prevent the recurrence of such incidents and improve service delivery.

(l) A program provider must ensure that all personal information maintained by the program provider or its contractors concerning an individual, such as lists of names, addresses, and records created or obtained by the program provider or its contractor, is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the TxHmL Program, and is otherwise neither directly nor indirectly used or disclosed unless the written permission of the individual to whom the information applies or the individual's LAR is obtained before the use or disclosure.

(m) The program provider must ensure that:

(1) the individual or LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds before the charges are assessed; and

(2) charges for items or services are reasonable and comparable to the costs of similar items and services generally available in the community.

(n) The program provider must not charge an individual or LAR for costs for items or services reimbursed through the TxHmL Program.

(o) At the written request of an individual or LAR, the program provider:

(1) must manage the individual's personal funds entrusted to the program provider;

(2) must not commingle the individual's personal funds with the program provider's funds; and

(3) must maintain a separate, detailed record of all deposits and expenditures for the individual.

(p) When a behavioral support plan includes techniques that involve restriction of individual rights or intrusive techniques, the program provider must ensure that the implementation of such techniques includes:

(1) approval by the individual's service planning team;

(2) written consent of the individual or LAR;

(3) verbal and written notification to the individual or LAR of the right to discontinue participation in the behavioral support plan at any time;

(4) assessment of the individual's needs and current level/severity of the behavior targeted by the plan;

(5) use of techniques appropriate to the level/severity of the behavior targeted by the plan;

(6) a written behavior support plan developed by a psychologist or behavior analyst with input from the individual, LAR, the individual's service planning team, and other professional personnel;

(7) collection and monitoring of behavioral data concerning the targeted behavior;

(8) allowance for the decrease in the use of intervention techniques based on behavioral data;

(9) allowance for revision of the behavioral support plan when the desired behavior is not displayed or techniques are not effective;

(10) consideration of the effects of the techniques in relation to the individual's physical and psychological well-being; and

(11) at least annual review by the individual's service planning team to determine the effectiveness of the program and the need to continue the techniques.

(q) The program provider must report the death of an individual to the MRA and DADS by the end of the next business day following the death of the individual or the program provider's knowledge of the death and, if the program provider reasonably believes that the individual's LAR or family does not know of the individual's death, to the individual's LAR or family as soon as possible, but not later than 24 hours after the program provider learns of the individual's death.

§9.583. TxHmL Program Principles for Mental Retardation Authorities.

(a) An MRA must notify an applicant of a TxHmL Program vacancy in accordance with §9.566 of this subchapter (relating to Notification of Applicants).

(b) An MRA must process requests for enrollment in the TxHmL Program in accordance with §9.567 of this subchapter (relating to Process for Enrollment).

(c) An MRA must have a mechanism to ensure objectivity in the process to assist an individual or LAR in the selection of a program provider and a system for training all MRA staff who may assist an individual or LAR in such process.

(d) An MRA must ensure the development and completion of the initial IPC and all necessary assessments within 45 working days of the individual or LAR documenting the choice of TxHmL Program services over ICF/MR Program services in accordance with §9.566(d)(2) of this subchapter.

(e) An MRA must submit to DADS necessary documentation for an applicant's enrollment within 10 working days after the applicant's or LAR's selection of a program provider.

(f) An MRA must ensure that its employees and contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(g) An MRA must ensure that an individual or LAR is informed orally and in writing of the following processes for filing complaints about service provision:

(1) processes for filing complaints with the MRA about the provision of service coordination; and

(2) processes for filing complaints about the provision of TxHmL Program services including:

(A) the telephone number of the MRA to file a complaint;

(B) the toll-free telephone number of DADS to file a complaint; and

(C) the toll-free telephone number of DFPS (1-800-647-7418) to file a complaint of abuse, neglect, or exploitation.

(h) An MRA must maintain for each individual:

(1) a current IPC;

(2) a current PDP;

(3) a current MR/RC Assessment; and

(4) current service information.

(i) For an individual receiving TxHmL Program services within the MRA's local service area, the MRA must provide the individual's program provider a copy of the individual's current PDP, IPC, and MR/RC Assessment.

(j) An MRA must employ service coordinators who:

(1) meet the minimum qualifications and staff training requirements specified in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with Mental Retardation); and

(2) have received training about the TxHmL Program, including the requirements of this subchapter and the TxHmL Program service components as specified in §9.555 of this subchapter (relating to Definitions of TxHmL Program Service Components).

(k) An MRA must ensure that a service coordinator:

(1) initiates, coordinates, and facilitates the person-directed planning process to meet the desires and needs as identified by an individual and LAR in the individual's PDP;

(2) coordinates the development and implementation of the individual's PDP;

(3) submits a correctly completed request for authorization of payment from non-TxHmL Program sources for which an individual may be eligible;

(4) coordinates and develops an individual's IPC based on the individual's PDP;

(5) coordinates and monitors the delivery of TxHmL Program and non-TxHmL Program services;

(6) integrates various aspects of services delivered under the TxHmL Program and through non-TxHmL Program sources;

(7) records each individual's progress;

(8) develops discharge and transfer plans, when necessary; and

(9) keeps records as they pertain to the implementation of an individual's PDP.

(l) An MRA must ensure that an individual or LAR is informed of the name of the individual's service coordinator and how to contact the service coordinator.

(m) A service coordinator must:

(1) assist the individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) assist the individual's LAR or family members to encourage the individual to exercise the individual's rights;

(3) inform the individual or LAR orally and in writing of:

(A) the eligibility criteria for participation in the TxHmL Program;

(B) the services and supports provided by the TxHmL Program and the limits of those services and supports; and

(C) the reasons an individual may be discharged from the TxHmL Program as described in §9.570 of this subchapter (relating to Permanent Discharge from the TxHmL Program);

(4) ensure that the individual and LAR participate in developing a personalized PDP and IPC that meet the individual's identified needs and service outcomes and that the individual's PDP is updated when the individual's needs or outcomes change but not less than annually;

(5) ensure that a restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(6) ensure that the individual or LAR is informed of decisions regarding denial or termination of services and the individual's or LAR's right to request a fair hearing as described in §9.571 of this subchapter (relating to Fair Hearings);

(7) ensure that, if needed, the individual or LAR participates in developing a discharge plan that addresses assistance for the individual after the individual is discharged from the TxHmL Program; and

(8) inform the individual or LAR that the service coordinator will assist the individual or LAR to transfer the individual's TxHmL Program services from one program provider to another program provider as chosen by the individual or LAR.

(n) When a change to an individual's PDP or IPC occurs or is needed, the service coordinator must communicate the need for the change to the individual or LAR, the individual's program provider, and other appropriate persons as necessary.

(o) At least 30 calendar days before the expiration of an individual's IPC, the service coordinator must:

(1) update the individual's PDP in conjunction with the individual's service planning team; and

(2) submit the updated information to the program provider for completion of necessary support methodologies to be incorporated in the updated PDP.

(p) A service coordinator must:

(1) review the status of an individual who is temporarily discharged at least every 90 calendar days following the effective date of the temporary discharge and document in the individual's record the reasons for continuing the discharge; and

(2) if the temporary discharge continues 270 calendar days, submit written documentation of the 90, 180, and 270 calendar day reviews to DADS for review and approval to continue the temporary discharge status.

(q) A service coordinator must:

(1) inform the individual or LAR orally and in writing, of the requirements described in subsection (m) of this section:

(A) upon receipt of DADS approval of the enrollment of the individual;

(B) if the requirements described in subsection (m) of this section are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes; and

(2) document that the information described in paragraph (1) of this subsection was provided to the individual or LAR.

(r) A service coordinator must, at least annually:

(1) inform the individual or LAR of the individual's right to participate in CDS and discontinue participation in CDS at any time, except as provided in §41.405(a) of this title (relating to Suspension of Participation in CDS);

(2) provide the individual or LAR a copy of Forms 1581, 1582, and 1583, which are available at http://www.dads.state.tx.us/handbooks/forms/default.asp?HB=CDS, and which contain information about CDS, including financial management services and support consultation;

(3) provide an oral explanation of the information contained in Forms 1581, 1582, and 1583 to the individual or LAR; and

(4) provide the individual or LAR the opportunity to choose to participate in CDS and document the individual's choice on Form 1584, which is available at http://www.dads.state.tx.us/handbooks/forms/default.asp?HB=CDS.

(s) If an individual or LAR chooses to participate in CDS, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all CDSAs providing services in the MRA's local service area;

(2) document the individual's or LAR's choice of CDSA on Form 1584;

(3) document, in the individual's PDP, a description of the service components provided through CDS; and

(4) document, in the individual's PDP, a description of the individual's service back-up plan.

(t) The service coordinator must document in the individual's PDP that the information described in subsections (r) and (s)(1) of this section was provided to the individual or LAR.

(u) For an individual participating in CDS, the MRA must recommend to DADS that financial management services and support consultation, if applicable, be terminated if the service coordinator determines that:

(1) the individual's continued participation in CDS poses a significant risk to the individual's health, safety or welfare; or

(2) the individual or LAR has not complied with Chapter 41, Subchapter B of this title (relating to Responsibilities of Employers and Designated Representatives).

(v) If an MRA makes a recommendation under subsection (u) of this section, the MRA must:

(1) submit the individual's IPC to DADS electronically; and

(2) submit the following, in writing, to the Department of Aging and Disability Services, Access and Intake, Program Enrollment, P.O. Box 149030, Mail Code W-354, Austin, Texas 78714-9030:

(A) a description of the service recommended for termination;

(B) the reasons why termination is recommended;

(C) a description of the attempts to resolve the issues before recommending termination; and

(D) other supporting documentation, as appropriate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2007.

TRD-200700153
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: March 1, 2007
Proposal publication date: September 15, 2006
For further information, please call: (512) 438-4162

40 TAC §§9.565, 9.566, 9.584, 9.585

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code, §531.051, which requires the Health and Human Services Commission to develop a program in which the use of vouchers is available as a payment option for the delivery of certain services to persons with disabilities, including Medicaid services; and Texas Human Resources Code, §32.066 which requires HHSC to establish a consumer-directed services program in which individuals enrolled in Medicaid waiver programs direct the delivery of program services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 22, 2007.

TRD-200700154
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: March 1, 2007
Proposal publication date: September 15, 2006
For further information, please call: (512) 438-4162

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.701 - 700.703, and 700.1713; the repeal of §700.704 and §700.705; and new §§700.704 - 700.706, without changes to the proposed text published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9275).

The justification for the proposal is to separate family-based safety services (currently "family preservation services") from family reunification services. Particularly in regions where outsourcing is implemented, where DFPS will retain responsibility for family-based safety services and other entities will provide family reunification services, separate rules for these different services will clarify roles and responsibilities. Throughout the rules "family-based safety services" replaces "family preservation services," to reflect the new designation for these services. Also, the agency's name is updated, and Child Protective Services (CPS) is changed to CPS Division.

Section 700.701 is revised to delete "reunification support services" from the list of services.

In §700.702, the time frames currently included in the criteria used to classify these services are deleted. Since the rules were previously adopted, DFPS practice has changed to include a risk and safety assessment tool. This tool rates child vulnerability, caregiver capability, and home environment, as well as other factors. The resulting information is then used to categorize cases based on the assessed degree of risk to a child. The current rules, which categorize cases based on the time period services are offered, restrict DFPS's flexibility, and, in some circumstances, prevent services from being provided.

In §700.703, the time frames currently used to distinguish regular, intensive early, and intensive family reunification services are deleted. To best serve families during the transition to outsourcing, when both DFPS and private entities will be responsible for service delivery in different parts of the state, DFPS will address specific time frames in policy and contract.

Section 700.704 is a new rule that outlines the requirements for family service plans for family-based safety services and family reunification services. Sections 700.705 and 700.706 are the new rules that outline the circumstances when family-based safety services and family reunification services are to be closed.

Section 700.1713 is amended to reflect corresponding changes to §§700.701, 700.702, 700.704, and 700.705. In addition, the charts contained in subsections (g) and (h) are deleted, with the relevant criteria inserted in the text. In subsection (g), examples of specialized services that may be provided are added to the text. In subsection (h), current minimum qualifications for contractors are inserted into the text and the remainder is deleted. Also, selected provisions of §700.1713, which are more appropriately addressed in contracts or program policy, are deleted.

The sections will function by clarifying DFPS's procedures and practices.

No comments were received regarding adoption of the sections.

SUBCHAPTER G. SERVICES FOR FAMILIES

40 TAC §§700.701 - 700.706

The amendments and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement HRC §40.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2007.

TRD-200700169
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 438-3437

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40 TAC §700.704, §700.705

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2007.

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Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER Q. PURCHASED PROTECTIVE SERVICES

40 TAC §700.1713

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2007.

TRD-200700171
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 438-3437

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CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER M. SUBSTITUTE-CARE SERVICES

40 TAC §700.1341

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §700.1341, without changes to the proposal as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9280).

The section is no longer needed because state and federal permanency legislation provide DFPS staff guidance on when termination of parental rights is appropriate.

The repeal will function by allowing staff to have more flexibility to make appropriate recommendations to the court, consistent with current practice.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Texas Family Code, Chapter 161.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2007.

TRD-200700172
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 438-3437

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§800.3, 800.5 - 800.7

The Texas Workforce Commission (Commission) adopts amendments, *without* changes, to the following sections of Chapter 800, relating to General Administration, as published in the November 17, 2006, issue of the *Texas Register* (31 TexReg 9445):

Subchapter A, General Provisions, §§800.3, 800.5, 800.6, and 800.7

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted rule amendment is to implement Senate Bill (SB) 452, enacted by the 79th Texas Legislature, Regular Session (2005), which amends Texas Government Code, Chapter 552 by transferring all duties relating to the Public Information Act to the Office of the Attorney General (OAG).

SB 452 streamlines the process of providing public information by housing all functions relating to the Public Information Act under one agency. OAG now responds to all questions about compliance with the Public Information Act. As a result, operations are more efficient and the public is better served.

The purpose of the adopted rule amendment is also to conform the language of §800.6(f) regarding de minimis requests to reflect that charges are assessed when permissible under the Public Information Act. Specifically, charges will be assessed for materials, labor, and overhead when the request is fewer than 50 pages and the records are located in two or more separate buildings that are not physically connected to each other or are in a remote storage facility.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§800.3. Historically Underutilized Businesses

Section 800.3(a) is modified to replace the General Services Commission with the Texas Building and Procurement Commission because of the agency's name change.

§800.6. Charges for Copies of Public Records

Section 800.6(a) is modified to replace the outdated reference to the General Services Commission with OAG rules (1 TAC, Chapter 70).

Section 800.6(c) is modified to replace the outdated reference to the General Services Commission with OAG rules (1 TAC, Chapter 70).

Section 800.6(f) is modified to align the rule regarding de minimis requests with Texas Government Code §552.261 et seq. to allow recoupment of the cost of handling open records requests that are under 50 pages. Specifically, the Public Information Act allows recoupment of charges for materials, labor, and overhead in situations where the requested records are located in two or more separate buildings that are not physically connected to each other or are in a remote storage facility.

Currently, Chapter 800 waives charges for open records that are 50 pages or less. However, some open records requests result in the production of fewer than 50 pages yet require extensive staff time and resources to fulfill. While the Commission intends to recoup charges where the materials, labor, and overhead charges are applicable under the Public Information Act for requests under 50 pages, the Commission may waive or reduce charges in circumstances in which §552.267 of the Public Information Act apply. Section 552.267 provides that a governmental body shall provide a copy of public information without charge or at a reduced charge if the governmental body determines that waiver or reduction of the charge is in the public interest because providing the copy of the information primarily benefits the general public. In addition, §552.267 provides that if the cost to a governmental body of processing the collection of a charge for providing a copy of public information will exceed the amount of the charge, the governmental body may waive the charge. The Commission intends to apply these provisions when such circumstances arise.

§800.7. Agency Vehicles

Section 800.7(a) is modified to replace the reference to the General Services Commission and Internet address with the Texas Building and Procurement Commission because of the agency's name change.

Section 800.7(b)(3) is modified to replace the reference to the General Services Commission with the Texas Building and Procurement Commission because of the agency's name change.

No comments were received.

The amendments are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amendments affect Texas Government Code, Chapters 552, 2161, and 2171.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2007.

TRD-200700162
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Effective date: February 12, 2007
Proposal publication date: November 17, 2006
For further information, please call: (512) 475-0829

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CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

40 TAC §819.92

The Texas Workforce Commission (Commission) adopts amendments, *without* changes, to the following section of Chapter 819 relating to the Texas Workforce Commission Civil Rights Division, as published in the November 17, 2006, issue of the *Texas Register* (31 TexReg 9448):

Subchapter F, Equal Employment Opportunity Records and Recordkeeping, §819.92

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the rule amendment is to clarify in rule the Commission's determination of what materials are available to the parties in a civil rights matter and what materials are beyond what would constitute reasonable access to the file. The Commission's authority for determining the scope of reasonable disclosure of documents is set forth in §21.305, Texas Labor Code, regarding Access to Commission records.

Specifically §21.305 provides that "the commission shall adopt rules allowing a party to a complaint filed under §21.201 reasonable access to commission records relating to the complaint."

Furthermore it provides that, "unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records: (1) after the final action of the commission; or (2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law." The rule defines reasonable access to include access to all records in the file, except those excepted from required disclosure under the Public Information Act and investigator notes. The purpose of the change in the rule is to make clear the intent of the Commission, under the authority of §21.305, Texas Labor Code, to exclude investigator notes from the materials in a civil rights matter that may be accessed. By so doing, the Commission is striving to ensure that investigators have the broadest latitude to thoroughly investigate and record their findings, while continuing to ensure that the parties have access to all other parts of the file. This proposal additionally aligns Commission practices with the Equal Employment Opportunity Commission's (EEOC) policies regarding release of records in employment discrimination complaints as reflected in the Memorandum of Understanding with EEOC.

Pursuant to §21.305, the Commission has determined what constitutes reasonable access to files. Claimants or respondents to a Civil Rights Division (CRD) investigation often request copies of the complete complaint file including the investigator's personal notes. Generally, while an individual is authorized to have access to copies of the contents in his or her CRD complaint file, the reasonable access does not include documents in the file that may be deemed confidential under the Public Information Act or an investigator's personal notes.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

The Commission adopts the following amendments to Subchapter F:

§819.92. Access to CRD Records

Section 819.92(b) is added to provide that pursuant to the authority granted the Commission in Texas Labor Code §21.305, reasonable access does not include: (1) information excepted from required disclosure under Texas Government Code, Chapter 552; or (2) investigator notes.

The new subsection provides that parties involved in an allegation filed with CRD may obtain copies of all items in the file relating to their claim but that reasonable access does not include documents in the file that may be deemed confidential under the Public Information Act or investigator notes, which will allow for more complete investigations and is consistent with the Commission's Memorandum of Understanding with EEOC.

No comments were received.

The amendment is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities. The rules are also proposed under Texas Labor Code §21.305, which provides the Commission with the authority to adopt rules allowing a party to a complaint filed under §21.201 reasonable access to Commission records relating to the complaint.

The amendment affects Texas Government Code, Chapter 552.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2007.

TRD-200700163
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Effective date: February 12, 2007
Proposal publication date: November 17, 2006
For further information, please call: (512) 475-0829

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CHAPTER 833. COMMUNITY DEVELOPMENT INITIATIVES
SUBCHAPTER B. TEXAS INDIVIDUAL DEVELOPMENT ACCOUNT PILOT PROJECT

40 TAC §§833.11 - 833.15

The Texas Workforce Commission (Commission) adopts the repeal of the following sections of Chapter 833, relating to the Community Development Initiatives (CDI) rules, as published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8979):

Subchapter B, Texas Individual Development Account Pilot Project:

§§833.11 - 833.15

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted repeal is to eliminate Chapter 833, Subchapter B, relating to the Texas Individual Development (IDA) Account Pilot Project. In 1999, Texas Labor Code §301.068 directed the Commission to create the Texas IDA Pilot Project. The goal of this project was to offer an opportunity for employed, yet economically disadvantaged, individuals to save earned income in order to purchase assets such as a postsecondary education, a home, or a small business. Based on this legislative direction, the Commission adopted Chapter 833, Subchapter B to administer the pilot project.

The Commission funded three pilot project consortia to assist eligible low-income individuals in saving for the asset purchases envisioned in the statute. In July 2003, an independent entity began an evaluation of the three IDA pilot projects. The contracts for the three pilot sites expired in February 2005, and the evaluation of the project was completed in April 2005. The Commission submitted the required report to the Legislature and the controlling statute, Texas Labor Code §301.068, expired September 1, 2005. Therefore, Subchapter B of Chapter 833 is no longer required.

No comments were received regarding the repeal.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it

deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2007.

TRD-200700164
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Effective date: February 12, 2007
Proposal publication date: November 3, 2006
For further information, please call: (512) 475-0829

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Department of Public Safety

Title 37, Part 1

Pursuant to Government Code, §2001.039, the Texas Department of Public Safety (department) files this notice of intent to review and consider for readoption, amendment, or repeal 37 TAC Chapter 7 (Division of Emergency Management), Chapter 9 (Public Safety Communications), Chapter 13 (Controlled Substances), and Chapter 34 (Negotiation and Mediation of Certain Contract Disputes).

The department will determine whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. Any changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register.*

Written comments relating to this rule review will be accepted for a 30-day period following publication of this notice in the *Texas Register.* Comments should be directed to Pat Holmes, Inspector, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0140.

TRD-200700231
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: January 29, 2007

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §9.10(b)

§9.10. Employee Level Examination Requirements for Licenses by Category *(Revised February 2007)*
Table 1

License Categories	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Employee Level Exams Offered:																
1. Bobtail Exam - See §9.10(b)(1)					*											
2. Transport Driver Exam - See §9.10(b)(2)			*		*											
3. Engine Fuel Exam - See §9.10(b)(3)					*							*				
4. DOT Cylinder Filling Exam - See §9.10(b)(4)					*	*			*	*						
5. Recreational Vehicle Exam - See §9.10(b)(5)					*								*			
6. Service and Installation Exam - See §9.10(b)(6)				*	*						*			*		
7. Appliance Service and Installation Exam - See §9.10(b)(7)				*	*									*		
8. Motor/Mobile Fuel Dispensing Exam - See §9.10(b)(8)					*		*		*	*						

Figure: 16 TAC §9.52(h)

LP-GAS MANAGEMENT-LEVEL TRAINING AND CONTINUING EDUCATION COURSES (Revised February 2007)
Table One

Course Number	Course Hours	AFT	Course Title	Category D Mgmt.	Category E Mgmt.	Category F Mgmt.	Category G Mgmt.	Category I Mgmt.	Category J Mgmt.	Category K Mgmt.	Category M Mgmt.
1.1	8		Introduction to Propane	x	x	x	x	x	x	x	x
2.1	8	x	Dispenser Operations		x	x	x	x	x		
2.3	8	x	Bobtail Operations		x						
3.1	8		Residential System Layout and Design	x	x					x	
3.2	8	x	Residential System Installation	x	x						
3.3	8	x	Appliance Conversion, Installation and Venting	x	x						
3.5	8		Residential Appliance Controls	x	x						
3.7	8		Electrical Troubleshooting and Repair of Residential Gas Appliances	x	x						
3.8	8	x	Recreational Vehicle Gas Appliances								x
3.11	8		Residential System Inspection	x	x						
6.1	8		Regulatory Compliance for Managers	x	x	x	x	x	x	x	x
80	80		Category E Management Course	x	x	x	x	x	x	x	x
16	16		Category F, G, I, and J Management Course		x	x	x	x	x		

LP-GAS EMPLOYEE-LEVEL TRAINING AND CONTINUING EDUCATION COURSES (Revised February 2007)
Table Two

Course Number	Course Hours	AFT	Course Title	Portable Cylinder Filling	Motor & Mobile Fuel	Bobtail	Bobtail Service & Installation[1]	Service & Installation	Appliance Service & Installation	RV Technician
1.1	8		Introduction to Propane	x	x	x	x	x	x	x
2.1	8	x	Dispenser Operations	x	x	x	x			
2.3	8	x	Bobtail Operations			x	x			
3.1	8		Residential System Layout and Design				x	x		
3.2	8	x	Residential System Installation				x	x		
3.3	8	x	Appliance Conversion, Installation and Venting				x	x	x	
3.5	8		Residential Appliance Controls				x	x	x	x
3.7	8		Electrical Troubleshooting and Repair of Residential Gas Appliances				x	x	x	
3.8	8	x	Recreational Vehicle Gas Appliances							x
3.11	8		Residential System Inspection			x	x	x	x	
80	80		Category E Management Course	x	x	x	x	x	x	x
16	16		Category F, G, I, and J Management Course	x	x	x	x			

[1] A "Bobtail/Service & Installation" notation on an LP-gas certification card indicates the individual is authorized to perform bobtail and service and installation activities.

COURSES WHICH COUNT TOWARDS CONTINUING EDUCATION CREDIT FOR MANAGEMENT-LEVEL CERTIFICATE HOLDERS (September 2005)
Table Three

Course Number	Credit Hours[1]	Course Title	Category D Mgmt.	Category E Mgmt.	Category F Mgmt.	Category G Mgmt.	Category I Mgmt.	Category J Mgmt.	Category K Mgmt.	Category M Mgmt.
CETP 1	8	Basic Principles and Practices	x	x	x	x	x	x	x	x
CETP 2.1	8	Propane Delivery Basics		x						
CETP 2.2	8	Operating a Bobtail to Deliver Propane		x						
CETP 2.3	8	Operating a Transport to Deliver Propane		x						
CETP 2.4	8	Operating a Cylinder Vehicle to Deliver Propane		x				x		
CETP 2.5	8	Operating a Truck, Tank Trailer or Tractor/ Trailer to Deliver or Relocate ASME Tanks		x						
CETP 3.1	8	Maintaining ASME Tanks		x						
CETP 3.2	8	Maintaining DOT Cylinders		x	x		x	x		
CETP 3.3	8	Operating Dispensing Equipment to Fill Containers		x	x	x	x	x		
CETP 3.4	8	Maintaining Bulk Plant Equipment		x						
CETP 3.5	8	Performing Cargo Tank Product Transfers		x						
CETP 3.6	8	Performing Railcar Product Transfers		x						
CETP 3.7	8	Maintaining DOT Intermodal Tanks		x						
CETP 4.1	8	Layout, Design, and Selection of a Vapor Distribution System	x	x						
CETP 4.2	8	Preparing and Installing Vapor Distribution Systems	x	x						
CETP 5	8	Liquid Transfer System Operations		x						
CETP 6	8	Appliance Installation	x	x						
CETP 7	8	Appliance Service	x	x						
CETP 8	8	Large Industrial/Commercial Gas-Fired Equipment Connection & Service	x	x						
PERC GAS Check	8	GAS Check	x	x						

[1] Credit hours may not equal the total number of course hours.

COURSES WHICH COUNT TOWARDS CONTINUING EDUCATION CREDIT
FOR EMPLOYEE-LEVEL APPLICANTS OR CERTIFICATE HOLDERS (Revised February 2007)
Table Four

Course Number	Credit Hours[1]	Course Title	Portable Cylinder Filling	Motor & Mobile Fuel	Bobtail	Bobtail Service & Installation[2]	Service & Installation	Appliance Service & Installation	RV Technician
CETP 1	8	Basic Principles and Practices	x	x	x	x	x	x	x
CETP 2.1	8	Propane Delivery Basics			x	x			
CETP 2.2	8	Operating a Bobtail to Deliver Propane			x	x			
CETP 2.3	8	Operating a Transport to Deliver Propane			x	x			
CETP 2.4	8	Operating a Cylinder Vehicle to Deliver Propane							
CETP 2.5	8	Operating a Truck, Tank Trailer or Tractor/Trailer to Deliver or Relocate ASME Tanks					x		
CETP 3.1	8	Maintaining ASME Tanks					x		
CETP 3.2	8	Maintaining DOT Cylinders	x						
CETP 3.3	8	Operating Dispensing Equipment to Fill Containers	x	x					
CETP 3.4	8	Maintaining Bulk Plant Equipment					x		
CETP 3.5	8	Performing Cargo Tank Product Transfers			x	x			
CETP 3.6	8	Performing Railcar Product Transfers							
CETP 3.7	8	Maintaining DOT IM Tanks							
CETP 4.1	8	Layout, Design, and Selection of a Vapor Distribution System				x	x		
CETP 4.2	8	Preparing and Installing Vapor Distribution Systems				x	x		
CETP 5	8	Liquid Transfer System Operations			x	x	x		
CETP 6	8	Appliance Installation				x	x	x	
CETP 7	8	Appliance Service				x	x	x	
CETP 8	8	Large Industrial/Commercial Gas-Fired Equipment Connection & Service				x	x		
PERC GAS Check	8	GAS Check			x	x	x	x	

Note: The CETP 2.4, 3.6, and 3.7 courses are not accepted by the Commission for continuing education credit.

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[1] Credit hours may not equal the total number of course hours.

[2] A "Bobtail/Service & Installation" notation on an LP-gas certification card indicates the individual is authorized to perform bobtail and service and installation activities.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Assistive and Rehabilitative Services

Notice of Public Hearing for DARS Annual Application for Federal Funds for Early Childhood Intervention

The Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention, is soliciting comments related to its annual application for federal funds for early childhood intervention. DARS will be requesting funding under the Individuals with Disabilities Education Act, Part C for federal fiscal year 2007. The funding application will be submitted to the U.S. Department of Education, Office of Special Education Programs on April 20, 2007. To request copies of annual funding application or to make comments concerning early childhood intervention contact: Kim Wedel, Assistant Commissioner, Early Childhood Intervention, Department of Assistive & Rehabilitative Services, 4900 North Lamar Blvd., Mail Code 3029, Austin, Texas 78751-2399; (512) 424-6753.

TRD-200700223
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: January 26, 2007

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Notice of Public Hearing for DARS Maximum Allowable Payment Schedule (MAPS)

The Department of Assistive and Rehabilitative Services (DARS) will hold a public hearing from 2:00 p.m. to 4:00 p.m. on Friday, February 23, 2007, in Conference Room 250 of the DARS Administration Building at 4800 North Lamar Boulevard in Austin, Texas, to receive public comments on the proposed FY 2007-2008 Maximum Allowable Payment Schedule (MAPS) rates used for the purchase of medical and medical-related services. The proposed implementation date for the new MAPS rates is March 1, 2007.

The schedule of proposed rates may be viewed or copies may be obtained by calling Stuart McPhail with DARS at (512) 424-4144 or visiting DARS at the Brown Heatly Building at 4900 North Lamar; Austin, Texas 78751.

Written comments on the proposed rates may be submitted to Stuart McPhail, Department of Assistive and Rehabilitative Services, 4900 North Lamar Boulevard, Austin, Texas 78751.

TRD-200700209
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: January 26, 2007

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Office of the Attorney General

Notice of Settlement of a Texas Clean Air Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Clean Air Act. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Settlement Agreement in Harris County, Texas and the Texas Commission on Environmental Quality v. Bobby Wood and Charles Talbert, individually d/b/a Bobby Wood & Company; Cause No. 2006-21885, 215th Judicial District, Harris County, Texas.

Background: This suit alleges violations of the Texas Clean Air Act resulting from the improper use of a trench burner in Harris County, Texas. The Defendants are Bobby Wood and Charles Talbert, who own and operate a land clearing business. The suit seeks injunctive relief, civil penalties, attorney's fees and court costs. The Clean Air Act violations are for air pollution and air nuisance.

Nature of Settlement: The settlement awards $5,500.00 in civil penalties and $875.00 in attorney's fees to the State and $5,500.00 in civil penalties and $1,000.00 in attorney's fees to Harris County. The settlement also enjoins Bobby Wood and Charles Talbert from operating a trench burner in Harris County.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Vanessa Puig-Williams, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200700250
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 30, 2007

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Notice of Settlement of a Texas Clean Air Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Clean Air Act. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or

considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Settlement Agreement in Harris County, Texas and the Texas Commission on Environmental Quality v. Valero Marketing and Supply Co.; Cause No. 2006-71320, 61st Judicial District, Harris County, Texas.

Background: This suit alleges violations of the Texas Clean Air Act resulting from odors emanating from an asphalt storage facility owned by Valero Marketing and Supply Company. The suit seeks civil penalties, attorney's fees and court costs. The Clean Air Act violations are for air nuisance.

Nature of Settlement: The settlement awards $4,500.00 in civil penalties and $1,000.00 in attorney's fees to the State and $4,500.00 in civil penalties and $1,000.00 in attorney's fees to Harris County. An additional $9,000.00 will be applied to Harris County's Ozone Network Supplemental Environmental Project.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Vanessa Puig-Williams, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200700252
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: January 30, 2007

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 19, 2007, through January 25, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on January 31, 2007. The public comment period for these projects will close at 5:00 p.m. on March 2, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Guadalupe-Blanco River Trust in partnership with Guadalupe-Blanco River Authority; Location: The proposed project site is located at the confluence of the Guadalupe River and Traylor Cut in Refugio County, Texas. The project site is approximately 4 miles southeast of Tivoli, Texas and 3.5 miles south of Highway 35 along River Road. The project can be located on the U.S.G.S. quadrangle map entitled: Austwell, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 713000; Northing: 3148380. Project Description: The purpose of this project is to restore flow and navigability to this section of the Guadalupe River by mechanically removing the accumulated sediment along the south bank and placing it in an upland contained disposal area. The applicant reports that since 1991, heavy sediment accumulation has occurred along the south bank of the Guadalupe River opposite of Traylor Cut. In some portions of the project site, the accumulated sediments have reduced average historical water depths of -6 to -8 feet ordinary high water mark (OHWM) to -2 feet OHWM. In addition, the sediment deposition has narrowed the width between historical OHWM's by approximately 36 feet along a stretch of the river for approximately 165 feet. The applicant is proposing to excavate approximately 0.34 acres of accumulated sediment in the river. The maximum volume of sediment to be excavated is approximately 900 cubic yards. The depth of the river will be returned to pre-sediment conditions of -6 to -8 feet OHWM and the historical OHWM of the southern bank will be restored with a proposed slope of 3: 1. Excavation will be performed through one-step excavation with an extended-boom backhoe. The excavation will not extend to, nor will it disturb, the north bank (OHWM) of the Guadalupe River. The sediment will be placed in an upland contained placement area approximately 13 to 35 feet southwest of the proposed excavation area. The placement area is approximately 175 feet by 171 feet (0.69 acres) and has been used as a placement area in the past. The applicant proposes to construct a stabilized berm around the perimeter of the placement area in order to contain all excavated material and prevent return waters from reaching the river. In addition to the constructed berm, the applicant proposes to incorporate Texas Commission on Environmental Quality (TCEQ) Tier I Best Management Practices. The applicant proposes to remove, and treat separately, any invasive species such as Chinese tallow (Triadica sebifera FACU+) and rattlebush (Sesbania drummondii, FACW) during the excavation. They will be consolidated into a brush-pile and burned so as not to germinate and dominate the placement area. CCC Project No.: 07-0083-F1; Type of Application: U.S.A.C.E. permit application #24437 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Genesis Producing Company; Location: The applicant proposes to drill a new oil well from an existing surface structure. The project is located in Copano Bay in State Tract (ST) 50, Refugio County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lamar, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 684914; Northing: 3112910. Project Description: The applicant proposes to drill a new oil well that will be known by the applicant as ST 50, Well No. 2. The new well would involve operation and maintenance of structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, and shell and gravel pads. The pad would occupy approximately 27,000 square feet (270 by 100 feet) and consist of approximately 4,500 cubic yards of crushed rock, shell, or washed gravel. Water depth at the proposed site is approximately -7.0 feet Mean Low Tide. During drilling activities, the applicant proposes to use a 500-foot radius around the drilling rig as a work area. Upon completion of drilling, the applicant proposes to leave in place an 8- by 20-foot well head and platform with a USCG navigational light atop it. CCC Project No.: 07-0089-F1; Type of Application: U.S.A.C.E. permit application #24434 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Genesis Producing Company; Location: The project is located in Copano Bay in State Tract (ST) 58, Refugio County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bayside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 681231; Northing: 3110774. Project Description: The applicant proposes to drill a new oil well that will be known by the applicant as ST 58, Well No. 1. The new well would involve operation and maintenance of structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, and shell and gravel pads. The pad would occupy approximately 27,000 square feet (270 by 100 feet) and consist of approximately 4,500 cubic yards of crushed rock, shell, or washed gravel. Water depth at the proposed site is approximately -7.0 feet Mean Low Tide. During drilling activities, the applicant proposes to use a 500-foot radius around the drilling rig as a work area. Upon completion of drilling, the applicant proposes to leave in place an 8- by 20-foot well head and platform with a USCG navigational light atop it. CCC Project No.: 07-0090-F1; Type of Application: U.S.A.C.E. permit application #24435 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Genesis Producing Company; Location: The project is located in Copano Bay in State Tract (ST) 50, Refugio County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 684818; Northing: 3111902. Project Description: The applicant proposes to drill a new oil well that will be known by the applicant as ST 50, Well No. 1. The new well would involve operation and maintenance of structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, and shell and gravel pads. The pad would occupy approximately 27,000 square feet (270 by 100 feet) and consist of approximately 4,500 cubic yards of crushed rock, shell, or washed gravel. Water depth at the proposed site is approximately -7.0 feet Mean Low Tide. During drilling activities, the applicant proposes to use a 500-foot radius around the drilling rig as a work area. Upon completion of drilling, the applicant proposes to leave in place an 8- by 20-foot well head and platform with a USCG navigational light atop it. CCC Project No.: 07-0091-F1; Type of Application: U.S.A.C.E. permit application #24436 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200700251

Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: January 30, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/05/07 - 02/11/07 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/05/07 - 02/11/07 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 02/01/07 - 02/28/07 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 02/01/07 - 02/28/07 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment, or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200700248
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 30, 2007

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Texas Education Agency

Public Notice Announcing the Availability of the Proposed Texas Individuals with Disabilities Education Act (IDEA) Eligibility Document: State Policies and Procedures

Purpose and Scope of the Part B Federal Fiscal Year (FFY) 2007 State Application and its Relation to Part B of the Individuals with Disabilities Education Improvement Act (IDEA). As a result of the 2004 amendments to the IDEA, all states must ensure that the state has on file with the Secretary of the U.S. Department of Education assurances that the state meets or will meet all of the eligibility requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446. A state may do this by one of the following methods: (1) providing assurances in the Part B FFY 2007 State Application that it has in effect policies and procedures to meet the requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446; (2) providing assurances in the State Application that the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations and make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of IDEA, as amended, as soon as possible and not later than October 31, 2007; or (3) submitting modifications to state policies and procedures previously submitted to the U.S. Department of Education.

Based on the extensive changes to the IDEA, the State of Texas (Texas Education Agency) has chosen to submit a State Application providing assurances the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations and make such changes

to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of IDEA, as amended, as soon as possible and not later than October 31, 2007.

Availability of the State Application. The Proposed State Application is available on the Texas Education Agency (TEA) Special Education web page at http://www.tea.state.tx.us/special.ed/eligdoc/index.html. The Proposed State Application document may be reviewed and/or downloaded from this web page address. In addition, instructions for submitting public comments are also available from the same site. The Proposed State Application document will also be available at the 20 regional education service centers (ESCs) and at the TEA Library (Ground Floor), 1701 North Congress Avenue, Austin, Texas 78701. Parties interested in reviewing the Proposed State Application should contact the TEA Division of IDEA Coordination at (512) 463-9414.

Procedures for Submitting Written Comments About the Proposed State Application. The TEA will accept written comments pertaining to the Proposed State Application by mail to the Texas Education Agency, Division of IDEA Coordination, 1701 North Congress Avenue, Austin, Texas 78701-1494 or by e-mail to sped@tea.state.tx.us.

Timetable for Submitting the Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004 for FFY 2007 to the Secretary of Education for Approval. After review and consideration of all public comments, the TEA will make necessary/appropriate modifications and will submit the State Application on or before May 4, 2007.

Further Information. For more information, contact the TEA Division of IDEA Coordination by mail at 1701 North Congress Avenue, Room 6-127, Austin, Texas 78701; by telephone at (512) 463-9414; by fax at (512) 463- 9560; or by e-mail at sped@tea.state.tx.us.

TRD-200700267
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: January 31, 2007

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Education Service Center, Region 16

Official Notice for Election of Places 3 and 6 on Board of Directors

Persons interested in filing for positions on the Board of Directors of Region 16 Education Service Center, an organization that provides educational services to 63 school districts and one charter school in the north 26 counties of the Texas Panhandle, may do so at the office of the Executive Director (5800 Bell Street, Amarillo, Texas) during regular office hours (8 a.m. to 5 p.m.) Monday through Thursday, (8 a.m. to 4 p.m.) Friday, beginning Wednesday, February 1, 2007. Deadline for filing is Monday, February 20, 2007, at 5 p.m.

Interested persons may file in person or, upon request, may receive a filing form by mail with the return by certified mail postmarked no later than 5 p.m., February 20, 2007. Phone: (806) 677-5015; Mailing address: 5800 Bell Street, Amarillo, TX 79109-6230.

The Board of Directors shall be elected by place. The following places (by counties) that are up for election are described as follows:

Place 3: Counties of Dallam, Hartley, Moore, Oldham, Potter (except Amarillo Independent School District), and Sherman

Place 6: That part of Potter and Randall counties included in the boundaries of Amarillo Independent School District

To hold the office of an Education Service Center Board of Director, one must:

• Be a United States of America citizen;

• Be at least 18 years of age;

• Be a resident of the region served and of the geographic area included in the place designated outlined above;

To hold the office of Board member, one may not:

• Be engaged professionally in education;

• Be a member of a board of any educational agency or institution.

Should there be an uncontested election; the Region 16 ESC Board has determined that no election will be held.

TRD-200700208
John Bass
Executive Director
Education Service Center, Region 16
Filed: January 25, 2007

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 12, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 12, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Acton Municipal Utility District; DOCKET NUMBER: 2006-1650-MWD-E; IDENTIFIER: Regulated Entity Reference Numbers (RN) RN102898459; LOCATION: Hood County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 Texas Administrative Code (TAC) §327.5(a)(3) and the Code, §26.121(a), by failing to immediately contain a spill or discharge and begin reasonable response actions; and 30 TAC §305.125(1), Texas

Pollutant Discharge Elimination System (TPDES) Permit Number 14211001, Effluent Limitations and Monitoring Requirements Number 2, and the Code, §26.121(a), by failing to comply with a total chlorine maximum permitted effluent limit of four milligrams per liter (mg/L); PENALTY: $5,775; Supplemental Environmental Project (SEP) offset amount of $4,620 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Angel Brothers Enterprises, Ltd. dba Angels Gas & Grocery; DOCKET NUMBER: 2006-1826-PST-E; IDENTIFIER: RN102443355; LOCATION: Mont Belvieu, Chambers County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection; 30 TAC §115.242(3), (3)(B), and (3)(J) and Texas Health & Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS); 30 TAC §334.6(b)(2), by failing to file construction notification; 30 TAC §334.48(a) and (c), by failing to ensure that the UST systems are operated, maintained, and managed in a manner that will prevent releases of regulated substances and by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.50(d)(4)(A)(i) and (d)(4)(A)(ii)(II), and the Code, §26.3475(c)(1), by failing to provide proper release detection and by failing to perform an automatic test for substance loss; PENALTY: $9,450; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Baha Capital Enterprises, Inc. dba Dry Clean Super Center; DOCKET NUMBER: 2006-1611-DCL-E; IDENTIFIER: RN104094552; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Betty J. Starling dba Betty's Cleaners; DOCKET NUMBER: 2006-1674-DCL-E; IDENTIFIER: RN104028576; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: $1,067; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Chedid, Inc. dba Conoco Mart 1; DOCKET NUMBER: 2006-0987-PST-E; IDENTIFIER: RN102059086; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain records on site at the station; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees and associated late fees; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Sun Ha dba College Station Cleaners and dba Discount Cleaners; DOCKET NUMBER: 2006-1474-DCL-E; IDENTIFIER: RN100655356, RN105014724, RN105014682, and RN104152566; LOCATION: College Station, Brazos County, Hearne, Robertson County, Navasota, Grimes County, Bryan, Brazos County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration forms; PENALTY: $4,740; ENFORCEMENT COORDINATOR: Thomas Greimel, (817) 588-5690; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2006-1550-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §115.112(a)(2), New Source Review (NSR) Permit Numbers 21265 and 5920A, Special Conditions 1 and 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit an emissions event report; PENALTY: $46,416; Supplemental Environmental Project (SEP) offset amount of $23,208 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Dale Water Supply Corporation; DOCKET NUMBER: 2006-1508-PWS-E; IDENTIFIER: RN100824960; LOCATION: Dale, Caldwell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii), (c)(2)(F), (c)(3)(A)(ii), and (f)(3), §290.122(b)(2)(A) and (c)(2)(A), and THSC, §341.033(d), by failing to conduct routine bacteriological monitoring, by failing to provide public notice for monitoring violations, by failing to collect at least four repeat samples following a total coliform-positive sample, and by failing to collect at least five routine samples the month following a total coliform-positive result, by failing to provide public notice for the failure to collect and submit the appropriate number of routine samples, and exceeding the maximum contaminant level for total coliform; PENALTY: $2,433; ENFORCEMENT COORDINATOR: Anita Keese, (956) 425-6010; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(9) COMPANY: Jimmy N. Tu dba Del Monte Washateria and Cleaners; DOCKET NUMBER: 2006-1585-DCL-E; IDENTIFIER: RN104987524; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Deluxe Enterprises, Inc. dba Zip Cleaners; DOCKET NUMBER: 2006-1465-DCL-E; IDENTIFIER: RN105010524, RN105020051, and RN105020192; LOCATION: Killeen, Bell County, Lampasas, Lampasas County, Copperas Cove, Coryell County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form for the facilities; PENALTY: $3,555; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: City of Eagle Pass Water Works System; DOCKET NUMBER: 2006-1712-PWS-E; IDENTIFIER: RN101387710 and RN101182285; LOCATION: Eagle Pass, Maverick County, Texas; TYPE OF FACILITY: public water supply with water supply facilities; RULE VIOLATED: 30 TAC §290.46(d)(2), (f)(3)(B)(iv) and (f)(4),

(m), (m)(1), and (s)(2)(B), and §290.110(b)(4), by failing to maintain a minimum of 0.2 mg/L of free chlorine or 0.5 mg/L total chlorine residual, by failing to maintain turbidity data, by failing to submit a copy of the schematic of the hydraulic flow in the distribution system, by failing to maintain the good working condition and general appearance of the system's facilities and equipment, by failing to conduct annual storage tank inspections, and by failing to conduct secondary calibration and verification on the turbidimeters; 30 TAC §290.45(b)(2)(B) and THSC, §341.0315(c), by failing to provide a treatment plant capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.43(c)(4), by failing to provide a proper liquid level indicator that is calibrated in feet of water; 30 TAC §290.42(d)(5), by failing to provide a flow measuring device; and 30 TAC §290.110(c)(5)(C), by failing to monitor the disinfectant residual; PENALTY: $6,272; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Eddie & Manal, LLC dba Café Natalie; DOCKET NUMBER: 2006-1509-PWS-E; IDENTIFIER: RN101198067; LOCATION: Fort Bend County, Texas; TYPE OF FACILITY: restaurant with public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i), (c)(2)(F), and (c)(3)(A)(ii), and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to perform routine bacteriological sampling, by failing to provide public notice of the failure to perform routine bacteriological monitoring, by failing to collect at least five routine samples the month following a total coliform-positive result, by failing to provide public notice of the failure to collect an appropriate number of routine samples, by failing to collect four repeat samples following a total coliform-positive sample, and by failing to provide public notice of the failure to collect repeat samples; PENALTY: $1,488; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Bok Hee Kim dba Elite Professional Cleaners; DOCKET NUMBER: 2006-1555-DCL-E; IDENTIFIER: RN102201365; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $770; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2006-1713-AIR-E; IDENTIFIER: RN100210574; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 4634B, Special Condition 1, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits; PENALTY: $14,450; ENFORCEMENT COORDINATOR: Jason Kemp, (512) 239-5610; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2006-1704-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Air Permit Numbers 47358 and 49125, Special Condition 1, and THSC, §382.085(b), by failing to limit the emissions to the permitted authorizations; PENALTY: $23,175; Supplemental Environmental Project (SEP) offset amount of $9,270 applied to Jefferson County: Retrofit/Replacement of Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2006-1743-AIR-E; IDENTIFIER: RN100542844; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Air Permit Number 7799, Special Condition 1, and THSC, §382.085(b), by failing to comply with the emissions limits; PENALTY: $5,975; Supplemental Environmental Project (SEP) offset amount of $2,390 applied to Jefferson County: Retrofit/Replacement of Heavy Equipment and Vehicles with Alternative Fueled Equipment and Vehicles; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: EZ Pickens Auto Ranch, Inc.; DOCKET NUMBER: 2006-1596-WQ-E; IDENTIFIER: RN103102653; LOCATION: Elm Mott, McLennan County, Texas; TYPE OF FACILITY: auto salvage; RULE VIOLATED: 30 TAC §281.25(a)(4), TPDES Permit Number TXR05O358, Part III.A.5.g, Part III.A.5.h, Part III.A.7.b., and Part III.D.1.b., and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to conduct periodic inspections, by failing to perform quarterly visual monitoring of the storm water discharge, by failing to conduct an annual comprehensive site compliance evaluation, and by failing to obtain a monitoring exclusion or conduct annual hazardous metals monitoring; and 30 TAC §205.6 and the Code, §5.702, by failing to pay outstanding general stormwater fees; PENALTY: $8,925; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Gessner Investments, LLC dba Chevron 108064; DOCKET NUMBER: 2006-1697-PST-E; IDENTIFIER: RN101625143; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; and 30 TAC §334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), and (d)(4)(A)(ii)(II) and the Code, §26.3475(a) and (c)(1), by failing to monitor USTs for releases, by failing to provide release detection, by failing to test the line leak detector, and by failing to perform an automatic test for substance loss; PENALTY: $16,000; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Khanh C. Nguyen and K. Nguyen and Sons Ltd. dba H P Cleaners; DOCKET NUMBER: 2006-1706-DCL-E; IDENTIFIER: RN101314714; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2006-1893-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 95, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $4,450; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Katy Independent School District; DOCKET NUMBER: 2007-0052-PST-E; IDENTIFIER: RN101879344; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: school district; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: City of Lancaster; DOCKET NUMBER: 2006-1731-PWS-E; IDENTIFIER: RN101387306; LOCATION: Lancaster, Dallas County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of two gpm per connection at each pressure plane; PENALTY: $525; ENFORCEMENT COORDINATOR: Amy Martin, (512) 239-2540; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Laredo Regional Medical Center L.P.; DOCKET NUMBER: 2006-1254-PST-E; IDENTIFIER: RN101867703; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: Hospital; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; and 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: Larry Hodge dba Larry's Discount Smokes; DOCKET NUMBER: 2006-2182-PST-E; IDENTIFIER: RN101773547; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; and 30 TAC §334.49(a)(1), by failing to provide corrosion protection; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 797055404, (915) 570-1359.

(25) COMPANY: Umesh Pradhan dba Lils General Food Store; DOCKET NUMBER: 2006-1918-PST-E; IDENTIFIER: RN101552966; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; PENALTY: $800; ENFORCEMENT COORDINATOR: Philip DeFrancesco, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Soo Jin Chung dba Livingstone Cleaners; DOCKET NUMBER: 2006-1615-DCL-E; IDENTIFIER: RN104282835; LOCATION: McKinney, Collin County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Lower Colorado River Authority; DOCKET NUMBER: 2006-1808-MWD-E; IDENTIFIER: RN101992691; LOCATION: Elgin, Bastrop County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010100001 Permit Conditions 2.g., and the Code, §26.121(a), by failing to prevent the unauthorized discharge of raw sewage; PENALTY: $5,850; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(28) COMPANY: Tom E. Miller, Sr.; DOCKET NUMBER: 2006-2185-PST-E; IDENTIFIER: RN101734432; LOCATION: Odessa, Ector County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 797055404, (915) 570-1539.

(29) COMPANY: Mizmez, Inc. dba Coppell Cleaners; DOCKET NUMBER: 2006-1462-DCL-E; IDENTIFIER: RN104998802; LOCATION: Coppell, Denton County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: Multiple Concepts, Inc. dba Step N Go Food Store; DOCKET NUMBER: 2006-1782-PST-E; IDENTIFIER: RN102450210; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(ii) and (d)(1)(B)(ii) and the Code, §26.3475(a) and (c)(1), by failing to have each pressurized line tested or monitored for releases and by failing to conduct reconciliation of detailed inventory control records at least once per month; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: Price Construction Ltd.; DOCKET NUMBER: 2006-2224-WQ-E; IDENTIFIER: RN102743747; LOCATION: Big Spring, Howard County, Texas; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 797055404, (915) 570-1359.

(32) COMPANY: Barkat Aly dba Reveille Cleaners; DOCKET NUMBER: 2006-1693-DCL-E; IDENTIFIER: RN100652700; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaners; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: $1,067; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: Gloria Saldana dba Rex Cleaners; DOCKET NUMBER: 2006-1317-DCL-E; IDENTIFIER: RN104094149; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(34) COMPANY: Hugh Howard dba Rio Grande Distributors Inc; DOCKET NUMBER: 2006-1847-PST-E; IDENTIFIER: RN102484326; LOCATION: Marfa, Presidio County, Texas; TYPE OF FACILITY: wholesale fuel supply; RULE VIOLATED: 30 TAC §337.75, by failing to contain and immediately clean up a spill or

overfill, report the spill or overfill to the agency, and begin corrective action; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-3434.

(35) COMPANY: Mike Oda dba Riverbend RV Park and Resort; DOCKET NUMBER: 2005-1495-PWS-E; IDENTIFIER: RN101250926; LOCATION: Fort Bend County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect and submit routine monthly bacteriological samples; and 30 TAC §290.122(c)(2)(B), by failing to post a public notice indicating the failure to collect and submit the monthly required samples; PENALTY: $788; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: Sabine Valley Pipeline, Inc.; DOCKET NUMBER: 2006-1970-AIR-E; IDENTIFIER: RN102608775; LOCATION: Easton, Gregg County, Texas; TYPE OF FACILITY: pipeline compressor station; RULE VIOLATED: 30 TAC §122.145(2)(B), Federal Operating Permit Number 2801, and THSC, §382.085(b), by failing to submit a deviation report; and 30 TAC §106.6(b) and THSC, §382.085(b), by failing to operate engines at levels represented under the Permit By Rule registration; PENALTY: $3,750; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(37) COMPANY: Salco Investments Inc.; DOCKET NUMBER: 2007-0058-PST-E; IDENTIFIER: RN101655918; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(38) COMPANY: Sandy's Cleaners and Alterations, Inc. dba Carol's Tailoring and Alterations; DOCKET NUMBER: 2006-1646-DCL-E; IDENTIFIER: RN104990080; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $1,067; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(39) COMPANY: Sharp Investment, Inc. dba Little Buddy 2; DOCKET NUMBER: 2006-1566-PST-E; IDENTIFIER: RN101822310; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3) and (3)(A) and THSC, §382.085(b), by failing to maintain the Stage II VRS; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: Rahim Ali dba Sierra Cleaners; DOCKET NUMBER: 2006-1287-DCL-E; IDENTIFIER: RN104309729; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $889; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(41) COMPANY: Ok Hui Choi Kim dba Stars Cleaners; DOCKET NUMBER: 2006-1534-DCL-E; IDENTIFIER: RN103953204; LOCATION: Houston, Brazoria County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(42) COMPANY: Super Heimer View, Inc. dba Exclusive Cleaners; DOCKET NUMBER: 2006-1582-DCL-E; IDENTIFIER: RN104130927; LOCATION: Bellaire, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(43) COMPANY: Timms Trucking and Excavating, Ltd.; DOCKET NUMBER: 2006-1795-WQ-E; IDENTIFIER: RN105023782; LOCATION: Von Ormy, Bexar County, Texas; TYPE OF FACILITY: excavation company; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(44) COMPANY: Trinity Industries, Inc.; DOCKET NUMBER: 2006-1666-AIR-E; IDENTIFIER: RN102418563; LOCATION: Saginaw, Tarrant County, Texas; TYPE OF FACILITY: railcar fabricating and repairing plant; RULE VIOLATED: 30 TAC §122.145(2) and THSC, §382.085(b), by failing to submit a deviation report; and 30 TAC §116.115(c), Air Permit Number 7318A, Special Condition Number 4, and THSC, §382.085(b), by failing to comply with permitted limits; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(45) COMPANY: United States Gypsum Company; DOCKET NUMBER: 2006-1773-AIR-E; IDENTIFIER: RN100209618; LOCATION: Sweetwater, Nolan County, Texas; TYPE OF FACILITY: gypsum product manufacturing; RULE VIOLATED: 30 TAC §122.143(4) and Federal Operating Permit Number O-02572, Special Condition Number 6, by failing to record the daily differential pressure readings and by failing to monitor the opacity readings; and 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: $18,375; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(46) COMPANY: US Customs and Border Protection; DOCKET NUMBER: 2006-2184-PST-E; IDENTIFIER: RN102388204; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(47) COMPANY: Valet Express Dry Cleaning Services Company Inc. dba Valet Express; DOCKET NUMBER: 2006-1642-DCL-E;

IDENTIFIER: RN103962569; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §382.085(b), by failing to renew the registration by completing and submitting the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay dry cleaner registration fees; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(48) COMPANY: City of Waco; DOCKET NUMBER: 2004-0191-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Permit Number 948-A; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: municipal solid waste landfill; RULE VIOLATED: 30 TAC §330.111 and §330.133(b) and (f) and MSW Permit 948-A, Attachment 15, Leachate and Contaminated Water Plan, Section 2, and Landfill Operating Plan, Section C.5.5, by failing to apply intermediate cover; 30 TAC §§330.111, 330.139, 330.5(a)(1), and 330.55(b), MSW Permit 948-A, Attachment 15, Leachate and Contaminated Water Plan, Section 2, and Part C, Landfill Operating Plan, Section C.9.4, and the Code, §26.121(a)(1), by failing to prevent unauthorized discharges of contaminated water and by failing to maintain run-off containment systems; 30 TAC §330.8(b) and §330.111 and MSW Permit 948-A, Attachment 15, Leachate and Contaminated Water Plan, and Order Docket Number 2001-0907-MSW-E, Ordering Provisions 3(f) and (g), by failing to modify the facility operations to monitor the leachate monthly or after significant rain events and by failing to follow the approved Leachate and Contaminated Water Plan for the proper storage and/or handling of leachate; and 30 TAC §330.111 and MSW Permit 948-A, Attachment 15, Section 4, by failing to appropriately certify that the operator shall modify the facility operations; PENALTY: $18,750; Supplemental Environmental Project (SEP) offset amount of $18,750 applied to converting low to moderate income residences from septic systems to sanitary sewer systems; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(49) COMPANY: Hoon Chin dba Welcome Cleaners; DOCKET NUMBER: 2006-1466-DCL-E; IDENTIFIER: RN105011068; LOCATION: Killeen, Bell County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(50) COMPANY: City of Winters; DOCKET NUMBER: 2005-1506-PWS-E; IDENTIFIER: RN101387850; LOCATION: Winters, Runnels County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(B), (e)(6)(C), (f)(3)(B)(iii) and (v), (m)(1)(A) and (C), (s)(1), (s)(2)(A) - (C), and (t), and §290.110(c)(1)(A) and (c)(5)(C), by failing to maintain a chloramine residual of 0.5 mg/L, by failing to have a class "C" or higher surface water operator on duty, by failing to calibrate flow measuring devices and rate-of-flow controllers, by failing to calibrate the laboratory equipment, by failing to conduct annual inspections, and by failing to post a legible sign at each of its production, treatment, and storage facilities; 30 TAC §290.42(f)(1)(E)(ii)(I) and (f)(2)(A), by failing to provide containment facilities for a single container or for multiple interconnected containers, by failing to monitor disinfectant residual, pH, temperature, and flow rate of the water in each disinfection zone, and by failing to provide a standby or reserve unit for each chemical feeder; 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement; 30 TAC §290.112(e), by failing to properly complete and submit periodic reports; and 30 TAC §290.44(h)(1)(A) and (h)(4), by failing to provide additional protection at the meter in the form of an air gap or backflow prevention assembly; PENALTY: $9,016; Supplemental Environmental Project (SEP) offset amount of $7,213 applied to demolition, removal, and proper disposal of asbestos containing material from unsafe structures and converting the property to a public park; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200700247
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 30, 2007

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Invitation to Comment on the Draft January 2007 Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft January 2007 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft January 2007 WQMP update may be found on the commission's Web site located at *http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html*. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on March 12, 2007. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at *nvignali@tceq.state.tx.us*.

TRD-200700246
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 30, 2007

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Notice of District Petition

Revised Notice issued January 29, 2007

TCEQ Internal Control No. 09112006-D08; Cherokee Webster Investors, L.P. and Cherokee Webster Development, L.P. (Petitioners)

filed a petition for creation of Harris County Municipal Utility District No. 481 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners hold fee simple title to a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Wachovia Bank, National Association, on the property to be included in the proposed District, and the Petitioners have provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 331.733 acres located in Harris County, Texas; and (4) the proposed District is within the corporate limits of the City of Webster, Texas. By Resolution No. 06-11, effective June 6, 2006, the City of Webster, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $42,100,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200700270

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 31, 2007

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 12, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 12, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Anusha, Inc. dba Citgo Food Mart; DOCKET NUMBER: 2005-1479-PST-E; TCEQ ID NUMBER: RN102432838; LOCATION: 6000 Antoine Drive, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks (USTs); PENALTY: $1,940; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Jesus Garcia; DOCKET NUMBER: 2006-0078-MSW-E; TCEQ ID NUMBER: RN104688874; LOCATION: County Road 410, 3/4 mile west of County Road 206, Falfurrias, Jim Wells County, Texas; TYPE OF FACILITY: unauthorized dump site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the disposal of municipal solid waste at an unauthorized site; PENALTY: $3,000; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: Mack Pool dba A&P Water Company; DOCKET NUMBER: 2005-0962-MLM-E; TCEQ ID NUMBER: RN102918794; LOCATION: 3397 United States Highway 259 South, Henderson, Rusk County, Texas; TYPE OF FACILITY: equipment and facilities for the transmission, storage, distribution, sale, or provision of potable water to the public; RULES VIOLATED: 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement, with provisions for proper enforce-

ment, to prevent cross-connections and other unacceptable plumbing practices; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction; 30 TAC §290.46(e)(3)(A); Texas Health and Safety Code (THSC), §341.033(a), by failing to ensure that the System, which serves fewer than 250 connections and uses purchased treated water, was at all times operated under the direct supervision of a water works operator who held an applicable, valid Class D (or higher) license issued by the executive director; 30 TAC §§290.46(f) and (n)(2), 290.109(c)(1), and 290.121, by failing to maintain: a record of water works operation and maintenance activities, an accurate and up-to-date map of the distribution system (so that valves and mains can be easily located during emergencies), a system monitoring plan, and an up-to-date chemical and microbiological monitoring plan, and by failing to submit periodic operating reports which report: the amount of chemicals used; the volume of water treated; the date, location, and nature of water quality; pressure or outage complaints received and the results of any subsequent complaint investigation; the dates that dead-end mains were flushed; the dates that storage tanks and other facilities were cleaned; the maintenance records for water system equipment and facilities; and a daily record or a monthly summary of the work performed and the number of hours worked by each of the part-time operators; 30 TAC §290.46(m)(1)(A), by failing to ensure that each of the System's ground tanks were inspected at least annually by water system personnel or a contracted inspection service to determine whether: the vents were in place and properly screened; the roof hatches closed and locked; flap valves and gasketing provided adequate protection against insects, rodents, and other vermin; the interior and exterior coating systems were continuing to provide adequate protection to all metal surfaces; and the tank remained in a watertight condition; 30 TAC §290.43(d)(3), and §290.46(m)(1)(B), by failing to ensure that each of the System's pressure tanks were inspected at least annually by water system personnel or a contracted inspection service to determine whether: the pressure release device and pressure gauge were working properly, the air-water ratio was being maintained at the proper level, the exterior coating systems were continuing to provide adequate protection to all metal surfaces, and the tank remained in watertight condition, and by failing to provide facilities for maintaining the air-water-volume at the design water level and working pressure with air injection lines equipped with filters or other devices to prevent compressor lubricants and other contaminants from entering the pressure tank; 30 TAC §290.109(c)(2)(A)(iii), and THSC, §341.033(d), by failing to, at least one time per month, collect and submit routine bacteriological samples for bacteriological analysis, taken from the public water supply; 30 TAC §288.20, by failing to have a drought contingency plan for the System; and 30 TAC §290.109(c)(2)(A)(ii), and §290.122(c)(2)(A), by failing to collect and submit routine bacteriological samples for the months of July - November of 2005, and by failing to provide public notice of the monitoring violations; PENALTY: $6,600; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: Meldimaa Enterprise, Inc. dba Silverline Dry Cleaner(s); DOCKET NUMBER: 2006-1132-DCL-E; TCEQ ID NUMBER: RN103962411; LOCATION: 2501 County Road 89, Suite B, Pearland, Texas (the CR 89 site); 15058 Highway 6, Rosharon, Texas (the Rosharon site), 1801 Country Place Parkway, Texas (the Country Place site), and 10228 Broadway Street, Suite 148, City of Pearland, Brazoria County, Texas (the Broadway site); TYPE OF FACILITY: dry cleaning facility and dry cleaner drop stations; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to register the facilities with the commission; PENALTY: $4,740; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Mohammad Arshad dba The Eagle Stop; DOCKET NUMBER: 2004-1424-PST-E; TCEQ ID NUMBER: RN102239456; LOCATION: 101 Interstate Highway 35 North West, Hillsboro, Hill County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $3,150; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Nam Sun Paek dba Metro Cleaners and dba Custom Cleaners; DOCKET NUMBER: 2006-0855-DCL-E; TCEQ ID NUMBERS: RN103955506 and RN104986906; LOCATION: 101 East Harwood Road, Suite 100, Hurst, Tarrant County, and 2601 Flower Mound Road, Suite 109, Flower Mound, Denton County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULES VIOLATED: 30 TAC §337.11(e); and THSC, §374.102, by failing to renew the facilities' registrations by completing and submitting the required registration forms to the TCEQ for the facilities; PENALTY: $2,370; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Richard R. Goody dba Rockin Texas Lounge; DOCKET NUMBER: 2006-1100-PWS-E; TCEQ ID NUMBER: RN101197325; LOCATION: 6903 Farm-to-Market Road 646 South, Santa Fe, Galveston County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i); and THSC, §341.033(d), by failing to collect and submit routine monthly samples for bacteriological analysis for the months of September - November 2005 and February 2006; PENALTY: $1,220; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Westex Capital, Ltd. dba Corner Store; DOCKET NUMBER: 2006-0411-PST-E; TCEQ ID NUMBER: RN102781952; LOCATION: 342 East Main Street, Yorktown, Dewitt County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2); and Texas Water Code, §26.3475(d), by failing to have the corrosion protection system operating in a manner that would ensure that corrosion protection would be continuously provided to all underground metal components of the UST system; PENALTY: $2,500; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200700258
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 30, 2007

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on

the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 12, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 12, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: AMK Enterprises, LLC dba The Old Tymer; DOCKET NUMBER: 2006-0381-PWS-E; TCEQ ID NUMBERS: RN102404399; LOCATION: 28295 Interstate Highway 10 West, Boerne, Bexar County, Texas; TYPE OF FACILITY: convenience store with a public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i), §290.122(c), and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis, and failed to provide public notice of the violations; 30 TAC §290.51(a)(3) and Texas Water Code (TWC), §5.702, by failing to pay past due public health service fees for Account No. 90150363; PENALTY: $2,640; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Bertha Vonderau dba Wharton Steam Laundry DS; DOCKET NUMBER: 2006-0654-DCL-E; TCEQ ID NUMBER: RN104959507; LOCATION: 1107 North Alabama, Wharton, Wharton County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form to the TCEQ for a drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Chong Bai Xia dba Twin Lakes Water Co.; DOCKET NUMBER: 2006-0022-PWS-E; TCEQ ID NUMBER: RN101453512; LOCATION: 6495 Appian Way, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(3)(A)(ii) and (c)(2)(F), and §290.122(c)(2)(A); and THSC, §341.033(d), by failing to collect and submit repeat samples following a coliform-positive result, by failing to collect the required number of additional samples following a month in which a coliform-positive sample was obtained and by failing to post public notice related to the failure to sample; PENALTY: $1,340; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Huertas Trucking Inc.; DOCKET NUMBER: 2006-0474-AIR-E; TCEQ ID NUMBER: RN104471958; LOCATION: 1025 West Commerce Street, Dallas, Dallas County, Texas; TYPE OF FACILITY: ready mix concrete batch plant; RULES VIOLATED: 30 TAC §116.110(a); and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing and operating a concrete batch plant; and 30 TAC §205.6; and TWC, §5.702, by failing to pay outstanding General Permits Stormwater Fees for Financial Administration Account No. 20014785; PENALTY: $10,000; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-0972; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Market Truck Stop Inc. dba Texas Truck Stop; DOCKET NUMBER: 2006-0288-PST-E; TCEQ ID NUMBER: RN102375094; LOCATION: 8772 Market Street Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(1)(B) and §334.50(d)(4)(A)(ii)(II); and TWC, §26.2475(c)(1), by failing to ensure that release detection equipment or procedures were provided or followed for the underground storage tanks (USTs) at the facility and by failing to perform an automatic test for substance loss that detects a release which equals or exceeds 0.2 gallons per hour from the UST system; and 30 TAC §334.48(c), by failing to conduct manual or automatic inventory control procedures for the UST system at the facility; PENALTY: $13,400; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Naide Enterprises, Inc. dba Big Star Mart; DOCKET NUMBER: 2005-1562-PST-E; TCEQ ID NUMBER: RN102352788; LOCATION: 2803 Vance Jackson Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(iii), by failing to post the delivery certificate in a location that is clearly visible at all times; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the facility; 30 TAC §334.7(d)(3), by failing to notify the commission within 30 days from the date of the occurrence of any change or addition to the UST system; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.51(b)(2)(C), and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other appropriate device designed to either automatically shut off the flow or restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level; PENALTY: $6,825; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Nathaniel Energy Corporation; DOCKET NUMBER: 2005-0388-MSW-E; TCEQ ID NUMBERS: RN100750645 and 6044115; LOCATION: 1323 Fulghum Road, Hutchins, Dallas County, Texas; TYPE OF FACILITY: tire storage facility; RULES VIOLATED: 30 TAC §328.61(c), by failing to provide a minimum separation of 40 feet between outdoor piles consisting of scrap tire

pieces; 30 TAC §328.61(g), by failing to provide an adequate fire protection system and equipment on site as required by the local fire marshal; 30 TAC §328.61(b)(1), by failing to maintain tire piles consisting of scrap tires or tire pieces at a maximum height of 15 feet; and 30 TAC §328.71(c), by failing to obtain approval to amend the current site operating plan and site layout plan reflecting the addition of two new tire piles for storage; PENALTY: $16,900; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2005-1671-AIR-E; TCEQ ID NUMBER: RN102561925; LOCATION: 11241 Interstate Highway 10, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: synthetic rubber manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(2), 113.100, 113.260, 116.115(c), and 122.143(4), New Source Review (NSR) Permit No. 38755/NO16, Special Conditions (SCs) 3 and 5, Operating Permit (OP) No. O-02294, Special Terms and Conditions (STCs) 1.A., 1.D., 1.E., and 9.A., 40 Code of Federal Regulations (CFR) §63.11(b)(5) and (b)(6)(ii), and THSC, §382.085(b), by failing to properly operate the 850 Unit Flare (Unit ID 2Q504); 30 TAC §§101.20(2), 113.100, 113.260, 116.115(c), and 122.143(4), NSR Permit No. 9481, SC 5.A., OP No. O-01593, STCs 1.A., 1.D., 1.F., and 12.A, 40 CFR §63.11(b)(6)(ii), and THSC, §382.085(b), by failing to operate the Budene Flare (Unit ID 3Q504) using gas with a net heating value of less than 300 British thermal units/standard cubic feet; 30 TAC §122.143(4), OP No. O-02294, STC-Additional Monitoring Requirements, and THSC, §382.085(b), by failing to keep hourly thermocouple monitoring records for the 850 Unit Flare; 30 TAC §111.111(a)(4)(A)(ii) and §122.143(4), OP No. O-02294, STC 1.A., and THSC, §382.085(b), by failing to record the time of day in the log of daily flare observations for the 850 Unit Flare; TAC §111.111(a)(4)(A)(ii) and §122.143(4), OP No. O-01593, STC 1.A., and THSC, §382.085(b), by failing to record the time of day or whether the flare was smoking in the daily flare operation log for the 870 Unit 3Q503 Wing Flare and the 3Q504 Budene Flare; 30 TAC §122.143(4), OP No. O-01593, STC 11, and THSC, §382.085(b), by failing to measure and record the pilot flame for the 870 Unit 3Q503 Wing Flare and for the 880 Unit 3Q504 Budene Flare; 30 TAC §122.143(4), OP No. O-02294, STC-Additional Monitoring Requirements, OP No. O-01593, STC-Additional Monitoring Requirements, and THSC, §382.085(b), by failing to maintain the Tiba Solution Tank's, the n-butyl lithium Storage Tank's, and the Modifier Makeup Tank's contents above the fill pipe; 30 TAC §§101.20(1) and (2), 113.260, 115.352(4), 116.115(c), and 122.143(4), 40 CFR §§63.167(a)(1), 60.482-6(a)(1), and 63.502(a), NSR Permit No. 38755/NO16, SCs 3 and 9.E., OP No. O-02294, STCs 1.A., and 1.D., and THSC, §382.085(b), by failing to install a second valve, a blind flange, or a tightly-fitting plug or cap on open ended lines in the 850 Unit; 30 TAC §§101.20(1) and (2), 113.260, 115.352(4), 116.115(c), and 122.143(4), 40 CFR §§63.167(a)(1), 60.482-6(a)(1), and 63.502(a), NSR Permit 1040, SC 4.E., NSR Permit No. 9481, SC 7.E., NSR Permit No. 22110, SCs 2 and 5.E., OP No. O-01593, STCs 1.A., 1.D., and 12.A., and THSC, §382.085(b), by failing to install a second valve, a blind flange, or a tightly-fitting plug or cap on open ended lines in the 840 and 880 Units; 30 TAC §§101.20(2), 113.260, 116.115(c), and 122.143(4), 40 CFR §63.502(a), NSR Permit No. 38755/NO16, SCs 3 and 9.N., and OP No. O-02294, STCs 1.A., 1.D., and 9.A., and THSC, §382.085(b), by failing to timely re-monitor repaired leaking fugitive emission components; 30 TAC §122.143(4), and §122.146(2), OP No. O-02294, General Terms and Conditions (GTCs), and THSC, §382.085(b), by failing to timely submit an Annual Compliance Certification (ACC); 30 TAC §122.143(4) and (15) and §122.165(a)(7), OP No. O-02294, GTC, and THSC, §382.085(b), by failing to include a Certification by a Responsible Official form in a semiannual deviation report; 30 TAC §122.143(4), and §122.145(2)(A), OP No. O-02294, GTCs, and THSC, §382.085(b), by failing to report the untimely submittal of an ACC; 30 TAC §122.143(4), and §122.145(2)(A), OP No. O-01593, GTCs, and THSC, §382.085(b), by failing to report excess opacity events; 30 TAC §101.201(e) and §122.143(4), OP No. O-01593, SC 2.F., and THSC, §382.085(b), by failing to report excess opacity events that were not properly reported to the TCEQ Regional Office; 30 TAC §116.115(c) and §122.143(4), NSR Permit No. 1040, SC 4.F., NSR Permit No. 9481, SC 7.F., NSR Permit No. 22110, SC 5.F., OP No. O-01593, STC 12.A., and THSC, §382.085(b), by failing to sample fugitive emission components; 30 TAC §§101.20(1) and (2), 115.352(2), 116.115(c) and 122.143(4), 40 CFR §60.482-2(c)(2) and §63.502(a), NSR Permit No. 22110, SC 2, OP No. O-01593, STC 1.A., and 12.A., and THSC, §382.085(b), by failing to conduct timely repair attempts on leaking fugitive emission components; 30 TAC §§101.20(1) and (2), 116.115(c) and 122.143(4), 40 CFR §60.482-2(c)(2), and §63.502(a), NSR Permit No. 22110, SC 2, OP No. O-01593, STCs 1.A., 1.D., and 12.A., and THSC, §382.085(b), by failing to conduct a second monitoring of a repaired component; 30 TAC §§101.20(1) and (2), 113.260, and 122.143(4), 40 CFR §63.502(a), OP No. O-01593, STC 1.A., and 1.D., and THSC, §382.085(b), by failing to properly isolate a pump from the process; 30 TAC §§101.20(1) and (2), 113.260, 116.115(c), and 122.143(4), 40 CFR §60.482-2(c)(2) and §63.502(a), NSR Permit No. 9481, SC 7.H., OP No. O-01593, STCs 1.A., 1.D., and 12.A., and THSC, §382.085(b) by failing to conduct timely repairs on leaking fugitive emission components in the 840 and 880 Units; 30 TAC §§101.20(1) and (2), 113.260, 116.115(c), and 122.143(4), 40 CFR §60.482-2(c)(2) and §63.502(a), NSR Permit No. 22110, SCs 2 and 5.F., OP No. O-01593, STCs 1.A., 1.D., and 12.A., and THSC, §382.085(b), by failing to conduct timely reports on leaking fugitive emission components in the Isoprene Unit; 30 TAC §§101.20(2), 113.260, and 122.143(4), 40 CFR §63.502(a), OP No. O-01593, STCs 1.A., and 1.D., and THSC, §382.085(b), by failing to maintain visual inspection records; 30 TAC §116.115(c) and §122.143(4), NSR Permit No. 1040, SC 4.F., OP No. O-01593, STC 12.A., and THSC, §382.085(b), by failing to properly monitor a fugitive emission component; 30 TAC §§101.20(2), 113.260, and 122.143(4), 40 CFR §63.506(b)(1)(i)(A), OP No. O-01593, STCs 1.D., and 1.F., and THSC, §382.085(b), by failing to keep complete startup, shutdown, and maintenance records; 30 TAC §115.216(3)(A)(iii) and §122.143(4), OP No. O-01953, STC 1.A., and THSC, §382.085(b), by failing to keep complete records of tank-truck volatile organic compounds transfers; 30 TAC §116.115(c) and §122.143(4), NSR Permit No. 1040, SC 4.H., NSR Permit No. 22110, SC 5.H., OP No. O-01593, STC 12.A., and THSC, §382.085(b), by failing to tag visually leaking fugitive emission components; 30 TAC §§101.20(1) and 101.20(3), and 122.143(4), 40 CFR §60.48b(b)(1), NSR Permit 20040/PSD-TX-801, SCs 2 and 13, OP No. O-01593, STCs 1.A., 1.G., and 12.A., and THSC, §382.085(b), by failing to record complete emissions data; 30 TAC §115.131(a) and §122.143(4), OP No. O-01593, STC 1.A., and THSC, §382.085(b), by failing to limit vent gas pressure; 30 TAC §111.121(6) and §122.143(4), OP No. O-01593, STC 1.A., and THSC, §382.085(b), by failing to limit opacity; 30 TAC §122.143(4), OP No. O-01593, STC 2.F., and THSC, §382.085(b), by failing to report excess opacity events; 30 TAC §115.136(a)(2)(B) and §122.143(4), OP No. O-01593, STC 1.A., and THSC, §382.085(b), by failing to properly monitor emissions control devices; 30 TAC §116.115(c), NSR Permit No. 1040, SC 1, NSR Permit No. 22110, SC 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; and 30 TAC §116.115(c) and §122.143(4), NSR Permit No. 9481, SC 4, OP No. O-01593, STC 12.A., and THSC, §382.085(b), by failing to sample cooling tower emissions; PENALTY: $283,654;

STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Transit Mix Concrete & Materials Company; DOCKET NUMBER: 2005-0609-MLM-E; TCEQ ID NUMBER: RN104352869; LOCATION: 3902 East Stan Schlueter Loop, Killeen, Bell County, Texas; TYPE OF FACILITY: concrete ready mix plant; RULES VIOLATED: 30 TAC §330.5(a), by failing to prevent the unauthorized disposal of municipal waste; and TWC, §26.121(a) and Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR05P896 Part V, Section E(4), page 56, by failing to prevent the unauthorized discharge of municipal waste into or adjacent to waters in the state; PENALTY: $27,500; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200700259
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 30, 2007

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter G, Transportation Planning, §114.260, Transportation Conformity, and to the state implementation plan (SIP), under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed rulemaking would incorporate recent federal transportation conformity revisions into the state's SIP and rule, including those from the six-year surface transportation reauthorization act of 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). In addition to addressing the SAFETEA-LU revisions, the rulemaking would also incorporate previous federal transportation conformity revisions and guidance that include: requesting states to incorporate into SIPs when a regionally significant, non-federal project is considered adopted or approved by a non-federal entity; adding transportation-related $PM_{2.5}$ precursors to the transportation conformity regulations; and deleting a previous quantitative PM_{10} and $PM_{2.5}$ hot-spot analysis.

A public hearing on this proposal will be held in Austin, Texas, on March 6, 2007, at 10:00 a.m., in Building B, Room 201A, at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons planning to attend the hearing, who have special communication or other accommodation needs, should contact Lola Brown, Office of Legal Services, at (512) 239-0348. Requests should be made as far in advance as possible.

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. The comment period closes March 12, 2007. All comments should reference Rule Project Number 2006-046-114-EN. The proposed rule may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information or questions concerning this proposal, please contact Marivel Rodriguez, Air Quality Division, at (512) 239-2474.

TRD-200700213
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 26, 2007

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Notice of Request for Public Comment and Notice of a Public Meeting for One Total Maximum Daily Load

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment one draft Total Maximum Daily Load (TMDL) for bacteria in Gilleland Creek (Segment 1428C) of the Colorado River Basin, located in northeastern Travis County. The TCEQ will conduct a public meeting to receive comments on the draft TMDL. This announcement also constitutes notice that the TMDL will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDL for impaired water bodies included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDL for bacteria in Gilleland Creek (Segment 1428C). The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL. The commission requests comment on each of the six major components of the TMDL: problem definition, endpoint identification, source analysis, linkage between sources and receiving waters, margin of safety, and pollutant loading allocation. After the public comment period, TCEQ staff may revise the TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments will be made available on the TCEQ Web site referenced below. The TMDL will then be submitted to EPA Region 6 for approval. Upon approval, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting will be held on February 22, 2007, at 7:00 p.m., at the Pflugerville Justice Center, 1611 East Pfennig Lane, Pflugerville, Texas 78691. At this meeting, individuals have the opportunity to present oral statements when called upon in order of registration. There will be no agenda or presentations given, open discussion will not occur during the meeting. However, an agency staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after all public comments have been received.

Written comments should be submitted to Edward Ling, Texas Commission on Environmental Quality, Water Programs Division, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., March 12, 2007, and should reference, *One Total Maximum Daily Load for Bacteria in*

Gilleland Creek, For Segment Number 1428C. For further information regarding the draft TMDL, please contact Edward Ling, Water Programs Division, at (512) 239-6238 or *eling@tceq.state.tx.us*. Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: *http://www.tceq.state.tx.us/implementation/water/tmdl/index.html* or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200700249
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 30, 2007

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Notice of Water Quality Applications

The following notices were issued during the period of January 8, 2007 through January 26, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

AQUA DEVELOPMENT, INC. has applied for a renewal of Permit No. 14125-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day via surface irrigation of 48 acres of a golf course. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located 0.1 mile southwest in the inlet of Indian Creek to Eagle Mountain Lake and 1.5 miles north-northwest of the intersection of County Road 1220 (Moris Dido Road) and Peden Road in Tarrant County, Texas. The facility and disposal site are located in the drainage basin of Eagle Mountain Lake in Segment No. 0809 of the Trinity River Basin.

AQUA TEXAS, INC. has applied for a renewal of TPDES Permit No. 12222-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located approximately 0.3 mile southwest of the intersection of Fisher Road and Southern Pacific Railroad, on the south bank of Cole Creek in Harris County, Texas.

AQUA UTILITIES, INC. has applied for a renewal of TPDES Permit No. WQ0011193001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located approximately 2,000 feet southeast of the intersection of Fisher and Brittmore Roads in Harris County, Texas.

AQUA UTILITIES, INC., 2211 Louetta Road, Spring, Texas 77388, has applied for a renewal of TPDES Permit No. 11375-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 184,000 gallons per day. The facility is located approximately 2.5 miles east of the intersection of Farm-to-Market Road 529 (Spencer Road) and U.S. Highway 290 between Windfern Road and Fairbanks-North Houston Road in Harris County, Texas.

CITY OF BOYD has applied for a renewal of TPDES Permit No. 10131-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. The facility is located on the north side of State Highway 114, approximately 1,000 feet east-northeast of the intersection of Farm-to-Market Road 730 and State Highway 114 in Wise County, Texas.

CANEY CREEK MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0014177001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 300,000 gallons per day to a daily average flow not to exceed 400,000 gallons per day. The facility will be located 650 feet south of the intersection of Dolphin Way and Old Caney Drive in Matagorda County, Texas.

CITY OF CENTERVILLE has applied for a renewal of TPDES Permit No. 10147-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 124,000 gallons per day. The facility is located immediately south of the State Highway 7 and approximately 1700 feet east of U.S. Highway 75 in the City of Centerville in Leon County, Texas.

THE CITY OF CROCKETT, 200 North Fifth Street, Crockett, Texas 75835-1502, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 10154-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 3,000 feet south of the intersection of U.S. Highway 287 and State Highway Loop 304 in Southeast Crockett in Houston County, Texas.

EAGLE PASS WATER WORKS SYSTEM has applied for a new permit, proposed TPDES Permit No. WQ0014688001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The proposed permit would also authorize the disposal of treated domestic wastewater via irrigation of 50 acres and the land application of sewage sludge for beneficial use on 50 acres. The facility and the effluent irrigation and sludge beneficial land uses sites will be located two miles southeast of the intersection of Farm-to-Market Road 1021 and Rosita Valley Road in Maverick County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 34 has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012298002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located approximately 0.25 mile north of the intersection of Farm-to-Market Road 1093 and Katy-Gaston Road in Fort Bend County, Texas.

FORT WORTH INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 11382-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via evaporation and/or surface irrigation of 20 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.5 miles northeast of the intersection (within the City of Briar) of Farm-to-Market Road 730 and Briar Road, and approximately 7.5 miles north-northeast of the City of Azle in Wise County, Texas. The facility and disposal site are located in the drainage basin of Eagle Mountain Reservoir in Segment No. 0809 of the Trinity River Basin.

FOSTER UTILITIES LLC has applied for a new permit, Proposed Permit No. WQ0014723001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day via non-public access subsurface drip irrigation system with a minimum area of 41.34 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located within the 35 Business Park development, approximately 2,500

feet east of the IH 35 access road and approximately 150 feet north of County Road 196 in Williamson County, Texas.

FREEDOM SHORES INVESTMENT PARTNERSHIP, LP has applied for a renewal of TPDES Permit No. 11350-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located on the south side of Farm-to-Market Road 356 and the west end of Farm-to-Market Road 356 Bridge over the White Rock Creek Arm of Lake Livingston in Trinity County, Texas.

FRY ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 11989-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 19903 Franz Road, approximately 1,000 feet west of the intersection of Franz Road and Fry Road in Harris County, Texas.

CITY OF GROVETON has applied for a renewal of TPDES Permit No. WQ0010556001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 220,000 gallons per day. The facility is located southeast of the City of Groveton on Coleto Road adjacent to Kickapoo Creek in Trinity County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 6 has applied for a renewal of TPDES Permit No. 11273-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 2 miles north and one mile east of the intersection of Fairbanks-North Houston Road and Whiteoak Bayou in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 7 has applied for a renewal of TPDES Permit No. 12140-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. TCEQ received this application on September 9, 2006. The facility is located at a point 1.9 miles north of Interstate Highway 10, approximately 5,500 feet northwest of the intersection of Fry Road and Franz Road on the southwest bank of South Mayde Creek and approximately 5.9 miles northwest of the intersection of Interstate Highway 10 and State Highway 6 in Harris County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 16 has applied for a renewal of TPDES Permit No. 11935-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility is located approximately 5,800 feet southwest of the intersection of Farm-to-Market Road 529 (Spencer Road) and State Highway 6 in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 170 has applied for a renewal of TPDES Permit No. WQ0012121001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located approximately 600 feet west of Jones Road, 5300 south of Farm-to-Market Road 1960 and adjacent to Whiteoak Bayou in Harris County, Texas.

THE CITY OF HUNTSVILLE has applied for a renewal of TPDES Permit No. 10781-003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,150,000 gallons per day. The facility is located 0.8 miles north of the intersection of State Highway 19 and Ellisor Road and 3.5 miles northeast of the intersection of U.S. Highway 30 and U.S. Highway 190, at the north end of Ellisor Road near the City of Huntsville in Walker County, Texas.

CITY OF LAKEPORT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014721001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility will be located approximately 1,200 feet northeast of the intersection of State Highway 149 and State Highway 322 in the City of Lakeport in Gregg County, Texas.

LAKE LAVON BAPTIST ENCAMPMENT has applied for a renewal of Permit No. 14192-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 625 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located 400 feet south of Farm-to-Market Road 982 and 15,000 feet south of the intersection of Farm-to-Market Road 982 and Farm-to-Market Road 546 in Collin County, Texas.

LEON SPRINGS UTILITY COMPANY has applied for a major amendment to TPDES Permit No. 14376-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 300,000 gallons per day to a daily average flow not to exceed 800,000 gallons per day. The facility is located in the southwest corner of the Dominion Subdivision, adjacent to Leon Creek and approximately 3.5 miles north of the intersection of Interstate Highway 10 and Loop 1604 in Bexar County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 15 has applied for a major amendment to TPDES Permit No. 11395-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 300,000 gallons per day to a daily average flow not to exceed 900,000 gallons per day. The facility is located on Gleneagles Drive, approximately 5,000 feet north of Needham Road in Montgomery County, Texas.

CITY OF PILOT POINT has applied for a renewal of TPDES Permit No. 10361-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 735,000 gallons per day. The facility is located approximately 1 mile west-southwest of the intersection of U.S. Highway 377 and State Highway Loop 387, approximately 1.5 miles northwest of the intersection of U.S. Highway 377 and Farm-to-Market Road 455 in Denton County, Texas.

TMF WATERWAY'S ENTERPRISES, INC. has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014727001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately 4,000 feet north of U.S. Highway 87 and approximately 5.7 miles east from the intersection of U.S. Highway 87 and Farm-to-Market Road 108 in Galveston County, Texas.

WHITE ROCK ESTATES PROPERTY OWNERS CIVIC ASSOCIATION has applied for a renewal of TPDES Permit No. 13354-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately 2,000 feet west of the bridge over the White Rock Creek Arm of Lake Livingston, approximately seven miles east of the City of Trinity on the south side of Farm-to-Market Road 356 in Trinity County, Texas.

CITY OF WILLOW PARK has applied for a renewal of Permit No. 13759-001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 264,000 gallons per day via surface irrigation of 233 acres of a golf course. This permit will not authorize a discharge of pollutants into water in the State. The facility is located approximately three miles southeast of the intersection of Interstate Highway 20 and Farm-to-Market Road 5, approximately 1.6 miles southwest of the intersection of Farm-to-Market Roads 1187

and 5 in Parker County. The disposal site is located approximately 1.6 miles due north of the Deer Creek Wastewater Treatment Facility in Parker County, Texas.

WODEN INDEPENDENT SCHOOL DISTRICT has applied to the TCEQ for a major amendment to Permit No. WQ0014345001, to authorize an increase in the daily average flow from 9,000 gallons per day to 12,000 gallons per day and to increase the disposal site from 2.3 acres to 3.9 acres. The proposed amendment also requests to reduce the application rate to 0.7 gallons per square foot per day, to change the disposal site from public access to non-public access and to remove disinfection requirements. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day via a public access subsurface drip irrigation system with a minimum area of 2.3 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at the northeast corner of the intersection of Farm-to-Market Road 226 and County Road 417; the wastewater treatment facility and disposal site are located approximately 1,500 feet east of the intersection of Farm-to-Market Road 226 and County Road 417, in Woden in Nacogdoches County, Texas.

NORTH ZULCH MUNICIPAL UTILITY DISTRICT has applied for a renewal of Permit No. 12192-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 0.034 gallons per day via surface irrigation of 9.4 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 0.5 mile northeast of the intersection of State Highway 21 and Loop 160, approximately one mile east of Farm-to-Market Road 39 in Madison County, Texas. The facility and disposal site are located in the drainage basin of Lake Livingston in Segment No. 0803 of the Trinity River Basin.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

AQUA WATER SUPPLY CORPORATION has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize the decrease in daily average flow of the interim I phase from 0.25 million gallons per day (MGD) to 0.125 MGD and the daily average flow of the interim II phase from 0.50 MGD to 0.25 MGD. The existing permit authorizes a daily average flow not to exceed 750,000 gallons per day. The facility will be located on an access road off Fagerquist Road, approximately 0.8 mile south of the intersection of Wolf Lane and Pearce Lane in Bastrop County, Texas.

KAUFMAN COUNTY MUNICIPAL UTILITY DISTRICT NO. 12 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize including an interim phase at a daily average flow not to exceed 240,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 720,000 gallons per day. The facility is located 7,925 feet northeast of the intersection of Farm-to-Market Road 741 and Farm-to-Market Road 2757 in Kaufman County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200700269
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 31, 2007

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual Report for Candidates and Officeholders Due July 17, 2006

David A. Jones, 733 W. 43rd St., Houston, Texas 77018-4401

Deadline: Semiannual Report for Political Committees Due July 17, 2006

Lynda P. Vine, Foundation Appraisers Coalition of Texas PAC, 6106 Vance Jackson Road #2, San Antonio, Texas 78230-3373

Deadline: Monthly Report Due September 5, 2006

Lulu P. Olson, Kinetic Concepts, Inc. PAC, P.O. Box 659508, San Antonio, Texas 78265-9508

Deadline: 50-Day Pre-Election Report Due September 18, 2006

Dorothy Khoury, Gregg County Republican Party, 607 Cynthia St., Longview, Texas 75605

Deadline: Semiannual Report for Candidates and Officeholders Due September 21, 2006

Judith Ann Cobbett, 2550 Long Ave., Beaumont, Texas 77702

Jonathan A. Rasco, 206 N. Whatley Rd., White Oak, Texas 75693-3602

Brandon Stacker, 5603 16th Pl., Lubbock Texas 79416

John Waldowski, 3616 Bryce Ave., Apt. 1, Fort Worth, Texas 76107

Deadline: 30-Day Pre-Election Report Due October 10, 2006

Milton I. Fagin, P.O. Box 100777, San Antonio, Texas 78201

Mike Higgins, Texas State Assn. of Fire Fighters Action Committee, 627 Radam Lane, Austin, Texas 78745

Greg A. Kauffman, 2315 Rock Creek Rd., Crowley, Texas 76036

Richard W. King, 7418 Silent Path, San Antonio, Texas 78250

Gerald W. LaFleur, 5810 Maple St., Houston, Texas 77074

Shedric M. McGill, P.O.W.E.R. PAC, 2211 Norfolk St., Ste. 210, Houston, Texas 77098

John R. McLeod, P.O. Box 51601, Denton, Texas 76206

Brenda Morott, Rockwall Action Team - PAC, P.O. Box 73, Fate, Texas 75132

Bruce Priddy, 17327 Davenport Rd., Dallas, Texas 75248

Jonathan A. Rasco, 206 N. Whatley Rd., White Oak, Texas 75693-3602

Jon Roland, 7793 Burnet Rd., #37, Austin, Texas 78757

Brandon Stacker, 5603 16th Pl., Lubbock, Texas 79416

Helen M. Stautmeister, Republican Women of Waller County, P.O. Box 954, Hempstead, Texas 77445

Pamela T. Thomas, Dallas County Council of Republican Women, 5349 Goodwin, Dallas, Texas 75206

Ellis E. Tredway, Student Loan Political Action Committee, 13013 Partridge Bend Dr., Austin, Texas 78729

John Waldowski, 3616 Bryce Ave., Apt. 1, Fort Worth, Texas 76107

Deadline: 8-Day Pre-Election Report Due October 30, 2006

Fernando Contreras Jr., Bexar County Democratic Party (CEC), P.O. Box 12341, San Antonio, Texas 78212

Richard W. King, 7418 Silent Path, San Antonio, Texas 78250

Sydney C. Leonard, Fort Worth Republican Women PAC, 2800 South Hulen, Suite 210, Fort Worth, Texas 76132

TRD-200700243
David Reisman
Executive Director
Texas Ethics Commission
Filed: January 29, 2007

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Office of the Governor

Notice of Application and Priorities for the Justice Assistance Grant (JAG) Program Federal Application

The Governor's Criminal Justice Division (CJD) is preparing its application for the 2007 federal Edward Byrne Justice Assistance Grant Program. The amount available for this program will be determined after Congressional adoption of the federal Fiscal Year 2007 appropriation for the U.S. Department of Justice.

The Governor's Criminal Justice Division proposes to fund projects that reduce violent crime.

Comments on the application or the priorities may be submitted in writing to Judy Switzer by email at jswitzer@governor.state.tx.us or mailed to the Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711. Comments must be received or postmarked no later than 30 days from the date of publication of this announcement.

TRD-200700266
Ken Nicolas
Executive Director, Criminal Justice Division
Office of the Governor
Filed: January 30, 2007

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Texas Health and Human Services Commission

Correction Notice

The Texas Health and Human Services Commission published a rate hearing notice in the February 2, 2007, issue of the *Texas Register* (32 TexReg 465). The purpose of the hearing, which will be held on February 21, 2007, is to receive public comment on the proposed Medicaid payment rates for specific procedure codes for physician-administered drugs/biologicals.

Due to an error in the Proposal section of the notice, the Current Medicaid Rate and Proposed Medicaid Rate for procedure code 90378, a seasonal vaccine, reads:

Procedure Code - 90378

Current Medicaid Rate - $14.04 per 50 mg

Proposed Medicaid Rate - $14.82 per 50 mg

As corrected, it should read as follows:

Procedure Code - 90378

Current Medicaid Rate - $14.04 per mg

Proposed Medicaid Rate - $14.82 per mg

The briefing package describing the proposed payment rates with the correction will be available on or after February 2, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Irene Cantu by telephone at (512) 491-1358; by fax at (512) 491-1998; or by e-mail at Irene.Cantu@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

TRD-200700272
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: January 31, 2007

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Notice of Cancellation of the Hearing on Proposed Provider Reimbursement Rates

The Texas Health and Human Services Commission (HHSC) is canceling the public hearing originally scheduled to be held on February 12, 2007, at 9:00 a.m., to receive comments from interested persons on proposed Medicaid reimbursement rates applicable to providers of Home and Community-based Services (HCS) and the Texas Home Living (TxHmL) Program. The notice of this hearing was published in the January 26, 2007, issue of the *Texas Register* (32 TexReg 418). The Department of Aging and Disability Services (DADS), which operates these programs, is delaying the expansion of the Consumer-Directed Services (CDS) option due to an anticipated federal approval date beyond the previously planned March 1, 2007, implementation date. Once federal approval is received, the public hearing will be rescheduled and notice of the hearing will be published in the *Texas Register* at that time.

TRD-200700271
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: January 31, 2007

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Department of State Health Services

Correction of Error

The Department of State Health Services adopted new 25 TAC §157.125, concerning requirements for trauma facility designation. The notice of adoption was published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10300). Typographical errors submitted by the agency appear in Figures: 25 TAC §157.125(x) and §157.125(y) in the Tables and Graphics section.

The word "Comma" on pages 10389 and 10400 should be "Coma". This error appears in Figure: 25 TAC §157.125(x) under G, Perfor-

mance Improvement #8, and again in Figure: 25 TAC §157.125(y) under G, Performance Improvement #7. The sentences as corrected should read:

"Documentation of severity of injury (by Glasgow Coma Scale, revised trauma score, age, injury severity score) and outcome (survival, length of stay, ICU length of stay) with monthly review of statistics."

On page 10398, in Figure: 25 TAC §157.125(y) under D, Emergency Department #10 q, an "E" was omitted from the far right column and has been replaced.

TRD-200700253

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Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Frisco	Frisco Medical Center LLP	L06036	Frisco	00	01/10/07
Iowa Park	IPS LLP	L06051	Iowa Park	00	01/04/07
Round Rock	Heart and Vascular of Central Texas	L06045	Round Rock	00	01/04/07
San Antonio	Jawadzar Shaikh MD	L06019	San Antonio	00	01/10/07

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Coffee Memorial Blood Center	L04705	Amarillo	07	01/10/07
Arlington	The University of Texas at Arlington	L00248	Arlington	45	01/10/07
Austin	St Davids Healthcare Partnership LP LLP DBA North Austin Medical Ctr	L04910	Austin	68	01/04/07
Austin	Daughters of Charity Heath Services of Austin DBA Brackenridge Hospital	L00268	Austin	92	01/03/07
Beaumont	Lamar University	L04047	Beaumont	25	01/09/07
Brownwood	3M Company	L00918	Brownwood	39	01/10/07
Bryan	Texas Municipal Power Agency Gibbons Creek Steam Electric	L02913	Bryan	20	01/10/07
Channelview	Phoenix Tubular Resources Inc	L05122	Channelview	02	01/11/07
College Station	College Station Hospital LP DBA College Station Medical Center	L02559	College Station	63	01/10/07
Cypress	Real Inspection Training Engineering	L05136	Cypress	17	01/11/07
Dallas	Methodist Hospitals of Dallas Radiology Srvs	L00659	Dallas	49	01/11/07
Dallas	Baylor University Medical Center	L01290	Dallas	81	01/11/07
Fort Worth	Dallas Cardiology Associates PA DBA Heartplace Huguley	L05883	Fort Worth	01	01/11/07
Fort Worth	Adventist Health System Sunbelt Healthcare Corporation DBA Huguley Health System	L02920	Fort Worth	29	01/04/07
Fort Worth	Texas Oncology PA	L05606	Fort Worth	13	01/09/07
Houston	Eric A Orzeck MD PA	L01599	Houston	15	01/10/07
Houston	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05493	Houston	08	01/09/07
Houston	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05455	Houston	13	01/09/07
Houston	Nuclear Imaging Services LLC	L05775	Houston	24	01/08/07
Irving	Columbia Medical Center of Las Colinas Inc DBA Las Colinas Medical Center	L05084	Irving	13	01/04/07
Longview	Good Shepherd Medical Center	L02411	Longview	79	01/11/07
Lubbock	IBA Molecular North America Inc DBA IBA Molecular	L05482	Lubbock	11	01/08/07
Midland	Endeavor Energy Resources LP	L05745	Midland	07	01/05/07
Midlothian	TXI Operations LP	L01421	Midlothian	43	01/03/07
Navasota	Glenn Fuqua Inc	L04736	Navasota	05	01/05/07
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	157	01/10/07
San Antonio	Saint Marys University	L00421	San Antonio	23	01/08/07
San Antonio	Medlab DBA Clinical Laboratory	L04824	San Antonio	11	01/04/07
SugarLand	Memorial Hermann Healthcare System DBA Memorial Hermann SugarLand Hospital	L03457	SugarLand	31	01/08/07

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	TEAM Industrial Services Inc	L00087	Alvin	156	01/09/07
Throughout TX	Texas Department of Transportation	L00197	Austin	124	01/04/07
Throughout TX	Applied Standards Inspection Inc	L03072	Beaumont	97	01/04/07
Throughout TX	Berry Fabricators	L01575	Corpus Christi	49	01/04/07
Throughout TX	Baylor University Medical Center	L01290	Dallas	80	01/09/07
Throughout TX	Terra-Mar Inc	L03157	Fort Worth	49	01/09/07
Throughout TX	TSIT	L05697	Fort Worth	03	01/10/07
Throughout TX	Wood Group Logging Services Inc	L05262	Houston	20	01/09/07
Throughout TX	Radiographic Specialists Inc	L02742	Houston	52	01/08/07
Throughout TX	Pathfinder Energy Services Inc	L05236	Houston	14	01/08/07
Throughout TX	Nuclear Sources & Services Inc DBA NSSI/Sources & Services Inc	L02991	Houston	33	01/03/07
Throughout TX	QC Laboratories Inc	L04750	Houston	19	01/11/07
Throughout TX	T C Inspection Inc	L05833	Oyster Creek	17	01/10/07
Throughout TX	Columbia Scientific Balloon Facility	L04717	Palestine	08	01/08/07
Throughout TX	Techcorr USA LLC	L05972	Pasadena	16	01/14/07
Throughout TX	Conam Inspection & Engineering Inc	L05010	Pasadena	118	01/03/07
Throughout TX	Geotechnical Consultants	L04819	San Antonio	08	01/11/07
Throughout TX	Texas Oncology PA DBA North Texas PET Imaging	L05502	Sherman	12	01/10/07
Throughout TX	Frontera Materials Inc	L04830	Weslaco	12	01/11/07
Waco	Providence Health Center	L01638	Waco	51	01/04/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Fannin	Coleto Creek Power LP DBA Coleto Creek Power Station	L02519	Fannin	19	01/04/07
Throughout TX	Giles Engineering Associates Inc	L04919	Dallas	09	01/05/07

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Spencer J Buchanan Associates Inc	L01783	Bryan	17	01/09/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200700244
Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 30, 2007

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Notice of Request for Proposals for the Zoonosis Control Branch's Animal Friendly Grants for the Spay/Neuter Project

INTRODUCTION

The Texas Department of State Health Services' (department) Zoonosis Control Branch announces a Request for Proposals (RFP) for the sterilization of dogs and cats owned by the public. The RFP will be released on or about February 12, 2007.

PURPOSE

The department's Zoonosis Control Branch announces the expected availability of fiscal year 2008 state funds from the sale of animal friendly license plates to provide grants for the sterilization of dogs and cats owned by the public at no or minimal cost.

PERIOD OF PROJECT

It is expected that the contract will begin on or about September 1, 2007, and will be made for a 12-month budget period, with a project period of 2 years.

AVAILABLE FUNDS

Approximately $250,000 is expected to be available to fund multiple contracts. One grant award per project period will be awarded per agency for the sterilization of dogs and/or cats, in a minimum amount of $1,000 to a maximum amount of $75,000 per contract period. The specific dollar amount awarded to each applicant depends upon the merit and scope of the proposed project.

ELIGIBLE APPLICANTS

Eligible applicants include: a private or public animal shelter (releasing agency); an organization that is qualified as a charitable organization under Internal Revenue Code, §501(c)(3), that has animal welfare or sterilizing dogs and cats owned by the general public at minimal or no cost as its primary purpose; or a local nonprofit veterinary medical association--an organization set up by and comprised of several volunteer veterinarians in their immediate region for the purpose of presenting continuing education, planning group activities, or discussing issues common to their professional field, and has an established program for sterilizing dogs and cats owned by the general public at minimal or no cost. If an applicant is currently debarred, suspended, or otherwise excluded or ineligible for participation in federal or state assistance programs, the applicant is ineligible to apply for funds under this RFP.

SCHEDULE OF EVENTS

Issuance of the RFP on or about February 12, 2007

Application Deadline on or about April 16, 2007

Award Notification on or about June 13, 2007

Contract Start Date on or about September 1, 2007

TO OBTAIN A COPY OF THE RFP

It is preferred that requests to obtain a copy of the RFP, scheduled for release on or about February 12, 2007, be downloaded from the Electronic State Business Daily (ESBD) website at http://esbd.tbpc.state.tx.us. Those organizations without Internet access may obtain a copy of the RFP by contacting Shannon Burke, Client Services Contracting Unit, Room T-502, Texas Department of State Health Services, 1100 West 49th Street, Austin, Texas, 78756-3199, fax (512) 458-7351, or e-mail Shannon.burke@dshs.state.tx.us.

CONTACT PERSON

All communications concerning the RFP shall be addressed in writing to Shannon Burke, Client Services Contracting Unit, Room T-502, Texas Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199; fax (512) 458-7351, or e-mail Shannon.burke@dshs.state.tx.us.

TRD-200700245

Cathy Campbell
General Counsel
Department of State Health Services
Filed: January 30, 2007

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Single Family Mortgage Revenue and Refunding

Tax-Exempt Commercial Paper Notes

Single Family Mortgage Revenue and Refunding Bonds

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 221 East 11th Street, Room 116, Austin, Texas, at 12:00 noon on March 6, 2007, with respect to (i) a plan of financing (the "Plan") that includes issues of single family mortgage revenue and refunding tax-exempt commercial paper notes (the "Future Notes"), the first of which is to be issued within one year of the date of the hearing described below and the last of which is to be issued no later than three years from the first delivery of a Future Note under the Plan, (ii) an issue of tax-exempt single family mortgage revenue bonds to be issued in one or more series in an aggregate face amount of not more than $110,000,000 (the "New Money Bonds"), and (iii) an issue of tax-exempt single family mortgage revenue refunding bonds to be issued in one or more series in an aggregate face amount of not more than $45,000,000 (the "Refunding Bonds" and together with the New Money Bonds, collectively, the "Bonds").

The Future Notes will be issued by the Department in a maximum aggregate face amount not to exceed $75,000,000 at any given time. The proceeds of the Future Notes will be used for one or more of the following purposes: (a) to refund certain single family mortgage revenue bonds of the Department and thereby to recycle prepayments of loans made with the proceeds of such bonds in order to provide single family residential mortgage loans; (b) to refund certain single family mortgage revenue bonds previously issued by the Department and thereby to recycle unexpended proceeds of such bonds in order to provide single family residential mortgage loans; and (c) to provide single family residential mortgage loans. For purposes of clause (a) above, only prepayments of mortgage loans financed with proceeds of tax-exempt mortgage revenue bonds issued within ten years from the date of receipt of the prepayments will be eligible for the recycling program.

A portion of the proceeds of the New Money Bonds will be used directly to make single family residential mortgage loans in an aggregate estimated amount not to exceed $110,000,000. All of such single family residential mortgage loans will be made to eligible very low, low and moderate income homebuyers for the purchase of homes located within the State of Texas. A portion of the proceeds of the Refunding Bonds will be used to refund all or a portion of the Department's outstanding Single Family Mortgage Revenue Bonds, 1997 Series A and Single Family Mortgage Revenue Bonds, 1997 Series D, the proceeds of which were used directly to provide single family residential mortgage loans.

For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families whose family income does not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income. In addition, substantially all of the borrowers under the programs will be required to be

persons who have not owned a principal residence during the preceding three years (except in the case of certain targeted area residences). Further, residences financed with loans under the programs will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. Pursuant to the Gulf Opportunity Zone Act of 2005, residences in certain areas affected by Hurricane Rita are treated as targeted area residences. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to applicable federal law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan finance program and the issuance of the Future Notes and the Bonds. Questions or requests for additional information may be directed to Heather Hodnett at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701; (512) 475-1899.

Persons who intend to appear at the hearing and express their views are invited to contact Heather Hodnett in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Heather Hodnett prior to the date scheduled for the hearing.

TDHCA WEBSITE: www.tdhca.state.tx.us/hf.htm

Individuals who require auxiliary aids for the hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989 at least two days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the hearing should contact Heather Hodnett at (512) 475-1899 at least three days before the hearing so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of State law and Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of interest on the Future Notes and the Bonds.

TRD-200700268
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 31, 2007

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Texas Department of Insurance

Company Licensing

Application to change the name of CONTINENTAL NATIONAL INDEMNITY COMPANY to CONTINENTAL INDEMNITY COMPANY, a foreign fire and/or casualty company. The home office is in Cedar Rapids, Iowa.

Application for incorporation to the State of Texas by PATRIOT INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Granbury, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200700273
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: January 31, 2007

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of PEARL INSURANCE GROUP, LLC, a foreign third party administrator. The home office is PEORIA HEIGHTS, ILLINOIS.

Application of BALDWIN & LYONS, INC., a foreign third party administrator. The home office is INDIANAPOLIS, INDIANA.

Application to change the name of SQM ADMINISTRATORS, INC. to JARDINE LLOYD THOMPSON BENEFITS, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application to change the name of EMPLOYER EMPLOYEE BENEFIT ADMINISTRATORS, INC. to, EMPLOYER EMPLOYEE BENEFIT ADMINISTRATORS, INC. (using the assumed name of HEALTHCARE MANAGEMENT SOLUTIONS), a domestic third party administrator. The home office is SAN ANTONIO, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200700274
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: January 31, 2007

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Texas Lottery Commission

Instant Game Number 784 "Fantastic 5's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 784 is "FANTASTIC 5'S". The play style for GAME 1 is "key number match with auto win". The play style for GAME 2 is "three in a line with BONUS area and multiplier. The play style for GAME 3 is "key symbol match with multiplier". The play style for GAME 4 is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 784 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 784.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $1,000, $5,000, $50,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, HORSE SHOE

SYMBOL, SHAMROCK SYMBOL, GOLD BAR SYMBOL, WISH BONE SYMBOL, RAINBOW SYMBOL, POT OF GOLD SYMBOL and STAR SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 784 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTEEN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUN
$500	FIV HUN
$1,000	ONE THOU
$5,000	FIV THOU
$50,000	50 THOU
01	ONE
02	TWO
03	THREE
04	FOUR
05	FIVE
06	SIX
07	SEVEN
08	EIGHT
09	NINE
10	TEN
11	ELV
12	TLV
13	TRN
14	FON
HORSE SHOE SYMBOL	WIN5X
SHAMROCK SYMBOL	PRIZE X5
GOLD BAR SYMBOL	TRYAGAIN
WISH BONE SYMBOL	TRY AGAIN
RAINBOW SYMBOL	TRY AGAIN
POT OF GOLD SYMBOL	WIN5X
STAR SYMBOL	WIN5X

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 784 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, 100 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (784), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 784-0000001-001.

L. Pack - A pack of "FANTASTIC 5'S" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Tickets 001 will be shown on the front the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FANTASTIC 5'S" Instant Game No. 784 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FANTASTIC 5'S" Instant Game is determined once the latex on the ticket is scratched off to expose 54 (fifty-four) Play Symbols. For GAME 1, if a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "HORSESHOE" play symbol, the player wins five times that PRIZE shown instantly. For GAME 2, if a player reveals three "5" play symbols in a complete row, column or diagonal, the player wins PRIZE shown. If a player reveals a "SHAMROCK" play symbol in the BONUS play area, the player wins five times the PRIZE shown instantly. For GAME 3, if a player reveals three "05" play symbols in the same PLAY, the player wins the PRIZE shown for that PLAY. If a player reveals two "05" play symbols and a "POT OF GOLD" play symbol in the same PLAY, the player wins five times the PRIZE. For GAME 4, if a player reveals a "05" play symbol, the player wins PRIZE shown below that symbol. If a player reveals a "STAR" play symbol, the player wins five times that PRIZE shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 54 (fifty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 54 (fifty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 54 (fifty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 54 (fifty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a pack will not have identical patterns.

B. The "Horseshoe", "Shamrock", "Pot of Gold", two (2) "05" symbols and "Star" symbols will each win five (5) times the prize amount shown and will win as per the prize structure. These symbols are combined on the prize structure as "5X".

C. GAME 1: Players can win up to five (5) times in this play area.

D.GAME 1: The "Horseshoe" symbol will instantly win five (5) times the prize shown below it.

E. GAME 1: The "Horseshoe" symbol can only appear within GAME 1 and will never appear more than once on a ticket.

F. GAME 1: The "Horseshoe" symbol will not appear on non-winning tickets.

G. GAME 1: No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

H. GAME 1: Non-winning prize symbols will not match a winning prize symbol on a ticket.

I. GAME 1: Non-winning tickets will not contain more than two matching prize amounts.

J. GAME 1: The "Horseshoe" symbol will never appear as a "WINNING NUMBER" play symbol.

K. GAME 1: YOUR NUMBERS play symbols will never equal the corresponding Prize symbol (i.e. 05 and $5).

L. GAME 2: Players can only win once in this play area.

M. GAME 2: No ticket will contain three (3) or more of a kind other than the "5" symbol.

N. GAME 2: The "5" symbol is the only symbol that can be used to make a winning line.

O. GAME 2: On non-winning tickets, there will be at least one row, column or diagonal with a pair of "5" symbols.

P. GAME 2: Winning tickets will contain only one (1) winning combination.

Q. GAME 2: Tickets will not contain four (4) "5" symbols in all 4 corners.

R. GAME 2: The BONUS area will only win if a "Shamrock" symbol appears and will win five (5) times the prize in the prize box.

S. GAME 2: The "Shamrock" symbol will not appear on tickets winning with the GAME 2 tic tac toe.

T. GAME 2: The "Shamrock" symbol will only appear in GAME 2.

U. GAME 2: The "Shamrock" symbol will not appear on non-winning tickets.

V. GAME 3: Players can win up to five (5) times in this play area.

W. GAME 3: There will never be more than two (2) matching prize amounts on a single ticket, except as required by a multiple win.

X. GAME 3: Players will win if they reveal three (3) "05" symbols within the same PLAY.

Y. GAME 3: If players reveal two (2) "05" symbols and a "Pot of Gold" symbol, they win five times the PRIZE for that PLAY.

Z. GAME 3: The "Pot of Gold" symbol can only appear a maximum of once in this area, as per the prize structure.

AA. GAME 3: The "Pot of Gold" symbol will only appear in GAME 3.

BB. GAME 3: The "Pot of Gold" symbol will never appear on non-winning tickets.

CC. GAME 3: Two (2) "05" symbols will never appear in the same PLAY with a $5.00 prize symbol.

DD. GAME 3: Neither of the following combinations will appear consecutively within a column or diagonal, unless created by a multi-win: - three (3) "05" symbols - two (2) "05" symbols with the "Pot of Gold" symbol (in any order)

EE. GAME 4: Players can win up to six (6) times in this play area.

FF. GAME 4: Tickets will win by revealing a "05" symbol.

GG GAME 4: The "05" symbol will only appear on winning tickets.

HH. GAME 4: The "05" symbol will appear approximately evenly over the six (6) play positions, with respect to other restrictions.

II. GAME 4: The "Star" symbol will win five (5) times the prize shown.

JJ. The "Star" symbol will not appear on non-winning tickets.

KK. The "Star" symbol will only appear in GAME 4.

2.3 Procedure for Claiming Prizes.

A. To claim a "FANTASTIC 5'S" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FANTASTIC 5'S" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FANTASTIC 5'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FANTASTIC 5'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "FANTASTIC 5'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 784. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 784 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	360,000	16.67
$10	560,000	10.71
$15	120,000	50.00
$20	80,000	75.00
$50	160,000	37.50
$100	9,750	615.38
$500	350	17,142.86
$1,000	120	50,000.00
$5,000	14	428,571.43
$50,000	5	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.65. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 784 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 784, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200700211
Kimberly Kiplin
General Counsel
Texas Lottery Commission
Filed: January 26, 2007

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on January 26, 2007, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Marcus Cable Associates, L.L.C. d/b/a Charter Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 33813 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33813.

TRD-200700264
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 30, 2007

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 23, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Communication Lines, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 33798 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by AT&T Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 14, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the com-

mission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33798.

TRD-200700234
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 29, 2007

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Texas State University-San Marcos

Request for Proposals

Texas State University-San Marcos seeks consulting services to assist the College of Health Professions' administration in the development of a generic bachelor of science in nursing degree (BSN) proposal; the proposal will be submitted in a format to meet the required approving bodies. The contract award will not exceed $50,000 for the period of March 1, 2007 through September 1, 2007. Selected consultant will be able to show evidence of recent work (within 3 yrs.) in conducting a feasibility study with curriculum development. Consultant's expenses such as travel, accommodations, meals, telephone and overnight delivery charges are included in the $50,000 contract. The contact person for this initiative is Ms. Margie Rodriguez, Sr. Administrative Assistant, Office of the Dean, College of Health Professions, Texas State University-San Marcos, (512) 245-3300, mr18@txstate.edu.

TRD-200700205
William A. Nance
Vice President for Finance and Support Services
Texas State University-San Marcos
Filed: January 25, 2007

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Workforce Resource, Inc.

Request for Proposals

Workforce Resource is seeking proposals for the operation and management of its Workforce Centers, incorporating at a minimum: the Workforce Investment Act (WIA), Temporary Assistance for Needy Families (TANF)/Choices, Food Stamp Employment and Training (FSE&T), Wagner Peyser Employment Services, and Reintegration of Offenders (RIO) programs. The contracting period will begin no earlier than October 1, 2007.

The Workforce Resource workforce development area includes the following 11 counties in North Texas: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young.

To obtain the Request for Proposal packets or to obtain more information, contact Joe Winkcompleck, Administrative Technician, at (940) 767-1432; fax: (940) 322-2683 or e-mail: joe.winkcompleck@twc.state.tx.us. Deadline to submit a proposal is 4:00 p.m. Friday, April 27, 2007.

Workforce Resource will hold a Bidders' Conference at 10:00 a.m. on Tuesday, March 6, 2007, in the Workforce Resource conference room at 901 Indiana Avenue, Suite 180, Wichita Falls, Texas 76301. We will not accept questions over the phone. We will accept written questions until noon on Tuesday, March 6, 2007. We will answer all questions during the Bidders' Conference.

Workforce Resource is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Program operation is dependent upon availability of funds from Texas Workforce Commission.

TRD-200700261
Mona Williams Statser
Executive Director
Workforce Resource, Inc.
Filed: January 30, 2007

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Workforce Solutions Brazos Valley

Notice of Error in Request for Quote for Video Production Services

RFQ Errata

On January 11, 2007, Workforce Solutions Brazos Valley Board (WSBVB) released a Request for Quote (RFQ) for video production services. The notice was published in the January 19, 2007, issue of the *Texas Register* (32 TexReg 274). The response deadline for submission of quotes was February 10, 2007, which is a Saturday. This deadline is an error. The actual deadline for response is February 12, 2007, not later than 4:00 p.m., CST. All other elements of the RFQ remain in effect. Potential proposers can print a copy of the RFQ from www.bvjobs.org. The contact person for this RFQ is Michael Rendón; call at (979) 595-2801, ext. 2013 or E-mail at mrendon@bvcog.org.

TRD-200700242
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley
Filed: January 29, 2007

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February - December 2007 Publication Schedule

Filing deadlines for publication in the *Texas Register* are 12 noon Monday for rules and 12 noon Wednesday for miscellaneous documents, rule review notices, and other documents. These deadlines are for publication. ***They are not related to posting requirements for open meeting notices.*** Because of printing and mailing schedules, documents received after the deadline for an issue cannot be published until the next issue. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

Issue date	**Rules:** **12 Noon**	**Other Documents:** **12 Noon**
7 Friday, February 16	Monday, February 5	Wednesday, February 7
8 Friday, February 23	Monday, February 12	Wednesday, February 14
9 Friday, March 2	**Friday, February 16*	Wednesday, February 21
10 Friday, March 9	Monday, February 26	Wednesday, February 28
11 Friday, March 16	Monday, March 5	Wednesday, March 7
12 Friday, March 23	Monday, March 12	Wednesday, March 14
13 Friday, March 30	Monday, March 19	Wednesday, March 21
14 Friday, April 6	Monday, March 26	Wednesday, March 28
15 Friday, April 13 *First Quarterly Index*	Monday, April 2	Wednesday, April 4
16 Friday, April 20	Monday, April 9	Wednesday, April 11
17 Friday, April 27	Monday, April 16	Wednesday, April 18
18 Friday, May 4	Monday, April 23	Wednesday, April 25
19 Friday, May 11	Monday, April 30	Wednesday, May 2
20 Friday, May 18	Monday, May 7	Wednesday, May 9
21 Friday, May 25	Monday, May 14	Wednesday, May 16
22 Friday, June 1	Monday, May 21	Wednesday, May 23
23 Friday, June 8	**Friday, May 25*	Wednesday, May 30
24 Friday, June 15	Monday, June 4	Wednesday, June 6

25 Friday, June 22	Monday, June 11	Wednesday, June 13
26 Friday, June 29	Monday, June 18	Wednesday, June 20
27 Friday, July 6 *Second Quarterly Index*	Monday, June 25	Wednesday, June 27
28 Friday, July 13	Monday, July 2	**Monday, July 2*
29 Friday, July 20	Monday, July 9	Wednesday, July 11
30 Friday, July 27	Monday, July 16	Wednesday, July 18
31 Friday, August 3	Monday, July 23	Wednesday, July 25
32 Friday, August 10	Monday, July 30	Wednesday, August 1
33 Friday, August 17	Monday, August 6	Wednesday, August 8
34 Friday, August 24	Monday, August 13	Wednesday, August 15
35 Friday, August 31	Monday, August 20	Wednesday, August 22
36 Friday, September 7	Monday, August 27	Wednesday, August 29
37 Friday, September 14	**Friday, August 31*	Wednesday, September 5
38 Friday, September 21	Monday, September 10	Wednesday, September 12
39 Friday, September 28	Monday, September 17	Wednesday, September 19
40 Friday, October 5 *Third Quarterly Index*	Monday, September 24	Wednesday, September 26
41 Friday, October 12	Monday, October 1	Wednesday, October 3
42 Friday, October 19	Monday, October 8	Wednesday, October 10
43 Friday, October 26	Monday, October 15	Wednesday, October 17
44 Friday, November 2	Monday, October 22	Wednesday, October 24
45 Friday, November 9	Monday, October 29	Wednesday, October 31
46 Friday, November 16	Monday, November 5	Wednesday, November 7
47 Friday, November 23	Monday, November 12	Wednesday, November 14
48 Friday, November 30	Monday, November 19	**Monday, November 19*
49 Friday, December 7	Monday, November 26	Wednesday, November 28
50 Friday, December 14	Monday, December 3	Wednesday, December 5

51 Friday, December 21	Monday, December 10	Wednesday, December 12
52 Friday, Decemb er 28	Monday, December 17	Wednesday, December 19

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).